

060
No. 2576

United States
Circuit Court of Appeals
For the Ninth Circuit.

Transcript of Record.

JAMES B. SMITH, F. C. MILLS and E. H.
MAYER,

Plaintiffs in Error,

vs.

THE UNITED STATES OF AMERICA,
Defendant in Error.

VOLUME III.

(Pages 737 to 1152, Inclusive.)

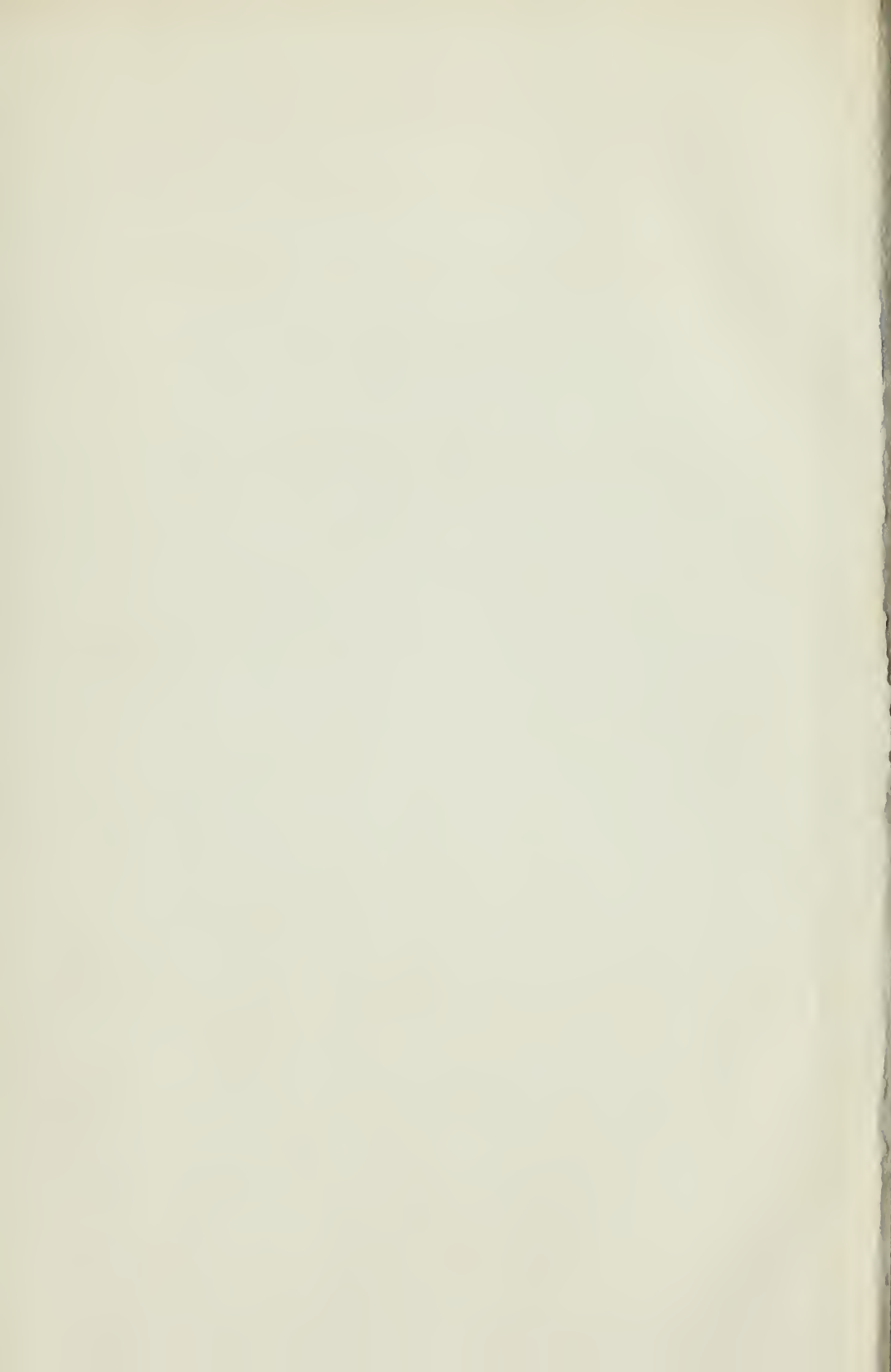
Upon Writ of Error to the United States District Court of the
Northern District of California, First Division.

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(Testimony of David G. Powers.)

Q. And Mr. Tidwell is what is known as the chief special agent for this division?

A. Chief treasury agent; yes, sir.

It was on September 10th, 1902, that I went to work as timekeeper for Mr. Mills. I am very positive about the date. Mr. Mills had contracts for trimming of coal with the Oriental & Occidental and the American & Hawaiian lines and with various tramp steamers. I noticed right away that while it was supposed to be the custom to weigh one bucket in every [647—591] fifteen, as a matter of fact that was not done. "A blind man could see that through spectacles." I became aware of it the first few days I was there, and I noticed also immediately that when no weight was to be taken the buckets would go up only three-quarters full, whereas when the order "On the scales" was given, the bucket would be filled to overflowing. I think the business then belonged to John Rosenfeld Sons. The Western Fuel Company was not in existence. Mr. Mills and Mr. Mayer came around there though. I used, even before 1902, to see them robbing the transports when the other people had it. I used to be around the water-front when I was a little boy. Mills was down there before 1902. I was not on the barges as early as that time, however. The first time that I noticed the buckets on the barges was in 1902. Mr. Mills to my knowledge has been in the trimming business for perhaps twenty years. Mr. Mills was a particular friend of my father, and my father was associated with him in trimming the vessels. They were part-

(Testimony of David G. Powers.)

ners, and had been almost as far back as I can remember Mr. Mills. My father and Mr. Mills were paid for their trimming by the ton as ascertained by the out-turn weight and the tons would be computed from the averaging of these rounds of weights which I have described to the jury. My father did the work, and Mr. Mills drew down the money. Mr. Mills paid me as timekeeper during those two years, 1902 to 1904. Mr. Mayer and Mr. Mills were also working for the Rosenfelds at this time. The Rosenfelds used to have the contract for coaling these vessels prior to the time the Western Fuel Company was organized. They were operating some of the same barges that I mentioned as belonging to the Western Fuel Company. Among these were the "Corsair" and the "Ludlow." My father did the actual trimming during this time. [648—592]

From 1904 to 1908 I worked both for Mr. Mills personally and for the Western Fuel Company. For the Western Fuel Company I had charge of the track of the Pacific Mail Steamship Company, and I did several jobs on the barges such as running the engine and taking the place of employees who might be sick. Sometimes I took the place of the hatch-tender for a day or two. In addition to the eight men, who are allotted two to each bucket on those barges, there are also employed on the barge a man who runs the engine, a barge-tender or keeper, a foreman of the barge and a hatch-tender. When the barge is coaling a vessel the hatch-tender stands over

(Testimony of David G. Powers.)

the hatch—directly over it. The signals for the hooking on of the tubs and the general operation of the buckets are given by the hatch-tender. When the custom-house weigher wants a round of buckets to go on the scales, the signal “On the scales” is given by the weigher himself or by the hatch-tender. The man standing in the hatch, in the daytime at least, would have to be blind not to see whether the buckets are or are not filled to the brim. Anybody standing at the hatch can see that perfectly plain. In that period, 1904 to 1908, I was myself very seldom hatch-tender. I was also not very often in this period a checker on the importation of coal. During that four years I worked at times along the waterfront for the Pacific Mail Steamship Company. I was paid by the Western Fuel Company by the day. The first time that I was ever regularly paid by the month was, I believe, in July, 1911. I cannot say how much time during that 1904 to 1908 period I was actually employed by the Western Fuel Company. Between the intervals of employment I would be doing nothing. When not acting as hatch-tender or weigher, I was probably in charge of the Pacific Mail Steamship Company’s tracks, but I was only employed there [649—593] occasionally, just as I was only employed occasionally by the Western Fuel Company as hatch-tender or weigher.

When I was sent over by Mr. Mills to work for the Pacific Mail Steamship Company in 1908, as I have heretofore testified on direct examination, I was working for Mr. Mills and the Western Fuel

(Testimony of David G. Powers.)

Company. I was checking and keeping time occasionally for Mr. Mills, and I was working around the barges and attending hatch sometimes for the Western Fuel Company. I only tended hatch a few times. There was no Pacific Mail dock at this time. I only weighed at the bunkers a few times during this period, that is in the period 1904 to 1908, before I was sent over to the Pacific Mail Steamship Company. Immediately before I was thus sent over "I was assisting, perhaps running the engine, or tending the hatch, or something else, or some other job."

Q. You testified here that you only remained with the Pacific Mail Company about 30 or 60 days, or something like that, before you quit in disgust. That is your testimony, that that was about as early as 60 days. A. Yes.

Q. Did you work only on the one occasion for the Pacific Mail Company as a checker?

A. No, many occasions.

Q. Sir? A. No.

Q. Well, I mean, did you work for them only for this single period of 30 or 60 days, or however long its duration might have been?

A. I don't understand your question.

Q. I will make myself clear. The question is not perhaps very clear. What I am trying to ask you is this, Mr. Powers, did you only work for the Pacific Mail Company one time, whether that time lasted for 30 or 60 days?

A. No, at different times. [650—594]

Q. How many different times?

(Testimony of David G. Powers.)

A. I don't remember.

Q. What? A. I don't remember.

Q. Well, can't you give us some idea with respect to that, as to whether it might have been half a dozen or more? A. I don't remember how many.

Q. Sir? A. I don't remember.

Q. Can't you give us an idea as to whether it was half a dozen or twenty different times?

Q. You don't remember? A. No.

Q. During what years, if you worked for them more than once, was it that you worked for them at odd times, for the Pacific Mail?

A. About 1908 or 9, I really don't remember; I think about 1909, somewhere around there; I am not sure of it.

Q. Do you mean by that answer that you worked there, according to your recollection, during odd intervals in 1908 and 1909?

A. No, during either one of those years, I am not sure.

Q. You testified here yesterday that you were working for the Fuel Company from 1904 to 1908?

A. Yes.

Q. And that in 1908 you were turned over by Mr. Mills to the Mail dock? A. I was.

Q. Well, wasn't it 1908, according to your recollection? A. I just told you I was not sure of it.

Q. When was the 60-day period that you had reference to in answering Mr. Roche—I think you said 30 or 60 days?

(Testimony of David G. Powers.)

A. The time that Mr. Mills sent me over to the Pacific Mail Steamship Company, after the engineers complained about being robbed.

Q. About what year was that?

A. I just told you I was not sure of it. I think it was 1908 or 1909, after the old Mail dock was dismantled, when they were at Pier 40 and 42. [651—595]

Q. Had you worked for the Pacific Mail before that? A. No.

Q. That was the first occasion, then?

A. And the last.

Q. And the last? A. Yes.

Q. Well, now, do you mean to be understood as testifying that you never worked for the Pacific Mail Company except upon that single occasion?

A. I don't say the single occasion, no. I said 60 days, 30 or 60 days.

Q. Now, do you mean to be understood that the only time you ever worked for the Pacific Mail was on this occasion, lasting from 30 to 60 days, or something in the neighborhood, the time that Mr. Mills sent you over?

A. It was not only one occasion, I told you; I worked for them about 30 or 60 days, but it was not on one ship or one occasion.

Q. I know, but that 30 or 60 days that you say that you worked for them, when Mr. Mills sent you over there, was that the only time that you ever did do work for them?

(Testimony of David G. Powers.)

A. That was the only time I ever worked for the Pacific Mail.

The COURT.—We will take a recess until two P. M.

Cross-examination (Resumed).

Mr. MOORE.—Q. Mr. Powers, at the time of the adjournment, I was asking you about the length of your employment with the Pacific Mail Company, do you recall that? A. Yes.

Q. Have you taken occasion to refresh your recollection with respect to that matter since adjournment? A. No.

Q. Well, what is the fact, Mr. Powers, in regard to it? Is it the fact that you only worked there on one occasion for a space of from 30 to 60 days, or is it the fact that you worked there a great many different times? [652—596]

A. I worked there at different times.

The COURT.—That is the difficulty about that question, your idea of one occasion and the witness' idea of one occasion are very different things.

Mr. MOORE.—I am coming to it.

Q. Within what period were all these different times included?

A. I don't remember the times, the dates.

The COURT.—Q. Did you work for the Pacific Mail Company at any other time than during these 60 or 30 days that you have testified to?

A. No.

Mr. MOORE.—Q. Now, when was that 30 or 60 days?

(Testimony of David G. Powers.)

Mr. ROCHE.—That question is objected to upon the ground that the same question has been repeatedly asked.

Mr. MOORE.—I want to see, if we have got it to 30 or 60 days, whether it was in 1908 or 1909, if he can testify to it. He testified yesterday it was in 1908.

The COURT.—So he did. To-day he said he could not determine whether it was 1908 or 1909.

Mr. MOORE.—Q. You testified here yesterday that from 1904 to 1908 you were working for the Fuel Company and continuing the work for Mr. Mills, as you put it, as a timekeeper, in connection with the trimming, as well, did you not? A. Yes.

Q. And you testified that in 1908 Mills sent you over to the Pacific Mail dock, did you not?

A. About 1908, yes.

Q. Did you say about 1908, or in 1908?

A. About 1908 or 1909.

Q. Well, what was your testimony when you were examined with respect to that matter yesterday, according to your recollection, as to whether you said 1908 or about 1908, or 1908 or 1909?

A. It was about 1908, if I remember right. [653—597]

Q. That is what you recall having testified to, is it?

A. Yes.

Q. And now you are unable to say whether it was in 1908 or 1909. What part of the year was it, which ever it might have been?

A. It might have been—my recollection is it would

(Testimony of David G. Powers.)

have been about the end of 1908 or 1909, between there—or the beginning of 1909.

Q. You say about the end of 1908 or the end of 1909, or between there? A. Between there.

Q. What do you mean by that?

Mr. ROCHE.—That question is objected to upon the ground that the meaning is quite apparent.

Mr. MOORE.—We will take a ruling.

The COURT.—The objection is overruled.

A. I mean it might have been at the end of 1908 and the beginning of 1909.

Mr. MOORE.—Q. Now, isn't it the fact, Mr. Powers, that instead of from 30 to 60 days, you worked on and off for the Pacific Mail as a checker for over a year? A. Not that I remember, no.

Q. Well, for at least an entire year, on and off?

A. I told you I worked for the Pacific Mail Company altogether somewhere around 30 or 60 days, between 1908 and 1909, at different times.

Q. Well, now, the question is, Mr. Powers, if you will answer it, is it not the fact that you worked off and on for that company throughout an entire year?

A. I don't remember.

Q. Well, what, according to your recollection, would be the limit of the period, each end of the period, so to speak, within which you worked at different times for the Pacific Mail?

A. Well, perhaps it might be two or three days or perhaps four [654—598] days, on an average.

Q. Well, the proposition is this, Mr. Powers, if you commenced to work for them to-morrow, the first

(Testimony of David G. Powers.)

time, how many months after to-morrow would it have been, according to your recollection, corresponding to the last time that you had ever worked for them. I want to know the general running space of time that that whole business covered?

A. Well, I really don't remember.

Q. What is your best recollection about it, if you have any? A. I have not any.

Q. Then, are you unable to say that it is not the fact that off and on, at different times, you worked for them throughout an entire year?

A. I could not say as to that.

Q. When was it, with respect to the first time that you ever went to work for them, that you claim you had this conversation with Mr. Chisholm?

A. At the time that Mr. Mills sent me over there.

Q. Well, then, the time that you protested was on the very first occasion that you went to work for them? A. Yes.

Q. Well, then, you quit in disgust, after that, did you?

A. I did not; I stayed there a while and I quit afterwards.

Q. How long after you had that conversation with Mr. Chisholm did you quit working for the Pacific Mail upon the last occasion that ever you worked for them? A. I don't remember.

Q. Well, you said something here yesterday about working for 30 or 60 days, and quitting in disgust, didn't you? A. Yes.

Q. Now, you say, to-day, that this conversation that

(Testimony of David G. Powers.)

you then related as having been had with Mr. Chisholm, took place very [655—599] shortly after you first went to work for them on the first occasion, did you not? A. Yes.

Q. Well, now, how long after that, whenever it was, was it that you quit in this disgust?

A. I don't remember.

Q. Didn't you work for them on and off after that for an entire year? A. I don't remember.

Q. You don't remember? A. No.

Q. Have you any idea with respect to that? Can you approximate the extent of time that elapsed between this conversation that you claim you had with Mr. Chisholm and the date upon which you quit in disgust? A. No.

Q. Now, how shortly after you were sent over there by Mr. Mills upon this very first occasion, was it that you had this conversation with Mr. Chisholm?

A. Well, the first part that I went over there, I went right to Chisholm's office.

Q. Then it was with respect to that very first barge, was it, in connection with which you were called upon to work? A. Yes.

The checker's duties on the barge are to see that the tubs are full, and that they take weights once in every fifteen tubs, or 60 tubs. It is not the checker, but the United States Government weigher, who has the authority to say when a tub shall be weighed; and if the tub be filled to overflowing, he has the right and privilege to say "We shall not weigh this." He can accept or reject any tubs that he

(Testimony of David G. Powers.)

pleases. When I quit the Pacific Mail Steamship Company the Western Fuel Company sent for me. Mr. Mills sent for me and reminded me again because I made several kicks during that time. We ran the barge short. You will find it if you look up the record, the barge "Nanaimo." He sent to see me about a barge that had run short, according to his statement. I did not ask him for a job. Mr. Mills then employed me as a hatch-tender. It is the duty of the hatch-tender to stand right over the hatch, and practically be the foreman of the barge when the barge is coaling the vessel. [656—600] The shovelers are down below in the hold. Sometimes I would give the signal "On the scales," but usually Mr. Edward J. Smith would do that. It was shortly after I quit the Pacific Mail Company that Mr. Mills gave me a job as a hatch-tender. It might have been a month or two or three months thereafter. It was not, therefore, immediately. I don't believe that it was as long as six months. It was about the year 1909. It was in the year that I left the Pacific Mail Steamship Company. I am unable to say as to whether I left that company in 1909, or 1908, 1910. I am not sure. It must have been 1910 or so. I continued to be employed as a hatch-tender until July, 1911. I was working as hatch-tender for about a year and a half prior thereto.

Q. Now, you testified here yesterday, your testimony was divided into certain periods, like 1902 to 1904, you were timekeeper, as you put it, to Mr. Mills, and 1904 to 1908 you were hatch-tender at times,

(Testimony of David G. Powers.)

running the engine at times, looking out for the mail track at times, and weighing on some occasions. You remember that? A. Yes.

Q. Then, in 1908, you went to work for 30 or 60 days for the Pacific Mail, and then you came back to the Western Fuel Company and stayed in the capacity of hatch-tender until July, 1911, and after that you became assistant superintendent. Now, I want to ask you the question if it was not until July, 1910, that you were employed on this last occasion as a hatch-tender, what had you been doing between 1908 and 1910?

A. I was working from 1908 to 1910, as I told you, for the Western Fuel Company at various positions; I worked as hatch-tender and other positions for them. [657—601]

Q. Did you work in the period there from 1904 to 1910 in these various positions, or was it from 1904 to 1908?

A. I worked in various positions all through, until the time I became assistant to Mr. Mills, the superintendent, that was in 1911, July, 1911.

Q. Well, your recollection is that you worked, now, as I understand you, as hatch-tender prior to that date, in July, 1911, about a year, or a year and a half; is that correct? A. Yes.

Q. Might it have been two years or two and a half years? A. No, it was not that long.

Q. Well, then, was it not 1910, instead of 1908, that you worked last for the Pacific Mail?

A. I am not sure of the date.

(Testimony of David G. Powers.)

Q. Do you mean to be understood as testifying you don't remember whether it was 1908 or 1909 or 1910 that you worked the last time for them?

A. I told you I thought it was between 1909 and 1910, but I would not swear to it. You have the records there that will show.

I was hatch-tender on all the barges, that is for this year and a half. I was not assigned to any particular barge. When I was working for the Pacific Mail Steamship Company they were trimming their own coal. When I left the Pacific Mail Steamship Company for the last time they were still trimming their own coal. Subsequently to that Mr. Mills and my father secured the contract for this trimming. The compensation for the trimming of this coal, as done by my father and Mr. Mills, was based upon the out-turn weights of the barges. Mr. Mills and my father had the contract for this trimming during the period for a year and a half when [658—602] I went back to work for the Western Fuel Company and was given a job as hatch-tender. I do not remember exactly how long it was after I began to be hatch-tender that they got this contract; it was perhaps a year. At any rate they lost the contract in December, 1911, which was the date I gave yesterday when I left the employ of the Western Fuel Company for the last time.

Q. And what were the circumstances of your leaving upon that occasion?

A. At the time I got into a little trouble and I left the Western Fuel Company's employ. I got into

(Testimony of David G. Powers.)

trouble and I went down there and asked for my money and I stopped working for them.

Q. Sir? A. I got into trouble.

Q. What was the date that you got into what you term this little trouble? A. December 13th.

Q. It was the 13th of the month?

A. Of December.

Q. And without going into that at very great length, Mr. Powers, you had the barge "Melrose" lying alongside the "Siberia" between the "Siberia" and the dock, on a Sunday night, did you not?

Mr. ROCHE.—Just one minute. That is objected to as being immaterial.

Mr. STANLEY MOORE.—Your Honor, it goes to the circumstances of his leaving the company. I have no desire to exploit the matter in and of itself, but I think the facts surrounding that should be brought out inasmuch as this witness stands in the relation that he does to this entire subject matter, and inasmuch as we have permitted him to be so freely examined upon direct examination with respect to leaving the Pacific Mail, the conversations with Mr. Chisholm, and the like, we think that we should be allowed to go into this matter. [659—603] And the matter that I was warned would happen when I would undertake his cross-examination on this point, if your Honor please, has already transpired.

Mr. ROCHE.—Now, I will withdraw the objection and you can go right ahead.

Mr. STANLEY MOORE.—We may have to wait

(Testimony of David G. Powers.)

for the witness to compose himself.

Q. Mr. Powers, on the night that you got—well, I will temporarily leave that, your Honor, just for a little while. In December, 1913, the early part of that month, or rather, I should say 1911, who was the barge-tender of the “Melrose”? A. Mr. Feedler.

Q. Of the “Melrose”?

A. I have forgotten his name; Christensen, I believe.

Q. Was it John Supple?

A. No, I believe it was Mr. Christensen.

Q. I don’t want to embarrass you, Mr. Powers, but was it not the “Melrose” that was lying alongside of the “Siberia” on that occasion? A. Yes, sir.

Q. Now, going back in your recollection, Mr. Powers, who was the barge-tender?

A. Mr. Christensen.

Q. Not on that very day, I don’t mean, but up to about a week before? A. Mr. Christensen.

Q. Don’t you remember a man by the name of Supple being barge-tender there? A. No, sir.

Q. What was Christensen’s first name?

A. I don’t remember his first name.

Q. What are the duties of a barge-tender?

A. A barge-tender is supposed to take charge of the barge.

Q. What are his duties with respect to remaining on board the [660—604] barge at night?

A. It was always my duty—it was always my opinion, if I was in charge of a barge and I was there, I would give a man a little recreation after he had

(Testimony of David G. Powers.)

done a hard day's work.

Q. What did the barge-tender do during the day?

A. He had charge of the barge, shifting it around, staying up all night sometimes and getting no over-time for it.

Q. When a barge was alongside a vessel coaling during the entire day, what would be the barge-tender be doing?

A. He would be cleaning up his barge and working around and taking charge of it.

Q. Generally speaking, his duties included that of keeper or watchman, did they not? A. Yes, sir.

Q. Now, about a week before this trouble occurred, Mr. Powers, do you recall putting in a complaint with Mr. Mills, making an accusation with Mr. Mills in regard to the barge-tender of the "Melrose"?

A. Not a week before, but about three weeks or a month before.

Q. Your recollection is that it was about three weeks or a month before? A. Yes, sir.

Q. Are you clear on that? A. Yes, sir.

Q. Is it not a fact that it was within a week?

A. No, sir.

Q. What was that accusation that you made?

A. I told Mr. Mills about me finding opium aboard.

Q. And you accused that man of putting it there, did you not?

A. I caught the man with the opium.

Q. Was the barge searched afterwards for opium?

A. It was.

Q. Was there opium found?

(Testimony of David G. Powers.)

A. There was not, I gave the man a chance to throw it away.

Q. What did Mr. Mills do to the man? [661—605]

Mr. ROCHE.—Just a minute. That is objected to, if your Honor please, as not proper cross-examination.

Mr. STANLEY MOORE.—I want to show, if your Honor please, that right before this trouble occurred this witness went to Mr. Mills with respect to the watchman of that barge and got him discharged on an accusation that the bargeman had permitted opium to come on board the boat; that on this Sunday night, without any keeper or tender of the barge in the employ of the company, with the man out of the way, they put the barge alongside of this steamer to have the coast clear for the opium to be lowered down, and that Mr. Mills discharged the man on his accusation.

Mr. ROCHE.—Well, I will withdraw the objection; go right ahead.

Mr. STANLEY MOORE.—Q. What did Mr. Mills do in view of your accusation?

A. Mr. Mills discharged the man.

Q. Did anybody ever see that opium that you say you gave the man a chance to throw away, besides yourself?

A. Yes, sir, Mr. Smith over there saw it. He was weighing the coal. He saw it thrown on the deck. Ed Smith did. Edward J. Smith saw the opium thrown on the deck from the "Persia," or one of those boats, the English boats, the small ones.

Q. And that was this matter as to which this man

(Testimony of David G. Powers.)

was discharged, was it? A. Yes, sir, it was.

Q. Did anybody else see it, outside of a defendant in this case? A. Yes, sir, my father saw it.

Q. Your father saw it? A. Yes, sir.

Q. Did anybody else see it?

A. The hatch-tender—no, not the hatch-tender, but the barge-man, saw it; he had it, he put it in back of the cabin. [662—606]

Q. Who was the barge-man?

A. I don't know his name, I can get him if you want me to.

Q. It was Mr. Supple, was it not?

A. Yes—I don't know his name; it may have been. Mr. Feedler will tell you all about it.

Q. Did anybody else see it besides them?

A. I told you that Mr. Smith saw it thrown aboard the barge by Goosey.

Q. You say Mr. Smith saw it; you say your father saw it; you say you saw it; you say the barge-tender saw it? A. Yes, sir.

Q. Did anybody else see it?

A. Feedler knows about it.

Q. Who is Feedler?

A. Emil Feedler, a former barge-tender of the Western Fuel Company.

Q. Who was it that received the opium that was lowered on the "Melrose" on the Sunday night that you got into trouble, besides yourself?

A. I don't know about a Sunday night.

Q. Well, whatever night it was, we won't quarrel about that; who was it? A. Emil Feedler.

Q. It was this same Emil Feedler, was it?

(Testimony of David G. Powers.)

A. Yes, sir.

Q. And he had joined in the complaint with you as the result of which that man was fired?

A. Yes—wait a moment, I didn't get that.

Q. I say Feedler had complained about the man too, had he not?

A. Feedler had never complained about the man; he is a particular friend of the man.

Q. Feedler had seen the opium, as the result of which you made this accusation and this man was discharged?

A. Feedler had not saw the opium; he knew about it afterwards. [663—607]

Q. I thought you testified here a few moments ago when I asked you who saw it, you said the defendant, Ed Smith saw it; you said your father saw it; you said the barge-tender himself saw it, and I thought you meant to be understood as testifying also that this same Emil Feedler had seen it?

A. Knows about it, and is a particular friend of this barge-man, or was.

Q. Did you, or not, mean to be understood as testifying in regard to these various parties here, that they had seen it or knew about it, whatever you may consider that to mean?

A. When I said that Mr. Ed J. Smith saw it thrown on the deck by Goosey, the fellow on the "Persia" or the "Asia," I don't know which one it was, they are both sister ships, and I testified also that my father saw it thrown aboard.

Q. Feedler did not see it?

A. He did not see it.

(Testimony of David G. Powers.)

Q. But he knows about it?

A. He knows about it, yes, sir.

Q. And it was Feedler who was with you on this night, and who went across the bay?

A. It was, yes, sir.

Q. And was walking up the streets of Oakland with you with the sacks when you were arrested?

A. Yes, sir.

Q. Feedler was an employee of the company too, was he not? A. Yes, sir.

Q. On what barge was he employed?

A. On the barge "Wellington."

Q. And within three weeks of the time that you and Feedler got this opium off the "Siberia" and hired a Crowley launch and took the skiff of the "Wellington" and brought it across the bay and started up town with it you had the barge-tender of that barge discharged on an accusation as having received opium?

A. I reported it to Mr. Mills and he was discharged. [664—608]

Q. You know that Mr. Mills discharged him on your report, do you? A. Yes, sir.

Q. Was there any hatch-tender on the "Melrose" that night?

A. That night—I don't understand you, what night?

Q. Was there any hatch-tender on the night that you and Feedler had her alongside the "Siberia"?

A. They were not discharging the barge that night.

Q. The hatch-tender is supposed to be on the barge

(Testimony of David G. Powers.)

when she has coal on her and is in the stream or is alongside a dock, whether they are discharging or not—I should have said the barge-tender?

A. Mr. Moore, I told you that when I was in charge, during the time I was in charge assisting Mr. Mills, I did not expect any man to work day and night, that he could go out and have a little recreation, that he could go to the theater, or wherever he wanted to go; I didn't think that a man was a dog.

Q. When the barges are lying alongside the vessels, I want to ask you again, Mr. Powers, just what would the barge-tender do during the day while the barge was lying there coaling the vessel?

A. He would clean up the barge, he would take charge of it and look around. He would have to keep up his steam. He would have to be up before 6 o'clock in the morning to have his steam up for the engineers, and he would have to bank the fire up at night, and sometimes he would have to stay up all night to have his barge ready during the day.

Q. An engineer is working there running the hoist, is he not? A. Yes, sir.

Q. When they are coaling a vessel during the day what part of the barge is there for him to clean up?

A. The decks.

Q. Is there very much deck-room to those vessels?
[665—609]

A. Some of them are pretty large; some of them carry 1800 tons.

Q. Are they all decked over?

A. Some of them are pretty wide; they have

(Testimony of David G. Powers.)

hatches in them, you know.

Q. How wide are some of them?

A. Four feet wide, each side.

Q. How often does a barge-tender clean up during the day when you are coaling that way?

A. I never stopped there to watch them.

Q. Do they do it at all?

A. Certainly they do it. And they have to paint up the cabin, and they have to splice the ropes; they have lots of work to do.

Q. Do they sweep the decks?

A. Why certainly they sweep the decks.

Q. Use a broom, do they, and sweep up the coal?

A. Certainly.

Q. Outside of sweeping the deck, what does he do?

A. I told you he had to splice his ropes; sometimes they shift a barge three or four or five times during the day. And he would have to get his steam up before 7 o'clock in the morning.

Q. Sometimes those barges are alongside a ship for a number of days, are they not? A. Yes, sir.

Q. And it is a pretty dirty place around there, is it not, according to what you say about the custom-house officers? A. It is.

Q. Do you mean to say they keep those barges tidy and clean? A. They do.

* * * * *

Q. Where does the barge-tender stay at night?

A. Do you mean when the barge is not working?

Q. When the barge is coaling, or is in the stream,

(Testimony of David G. Powers.)

or is [666—610] alongside of a mail boat or a steamer?

A. Do you mean when the barge is lying alongside of a steamer?

Q. You can take it either way.

A. When the barge is discharging into a steamer the barge-man has to be there all night, the same as he is all day, and receives no overtime for it.

Q. Is it not his duty, where a barge is lying alongside of a steamer loaded with coal, to remain on that barge at night, whether the barge is discharging coal into the steamer during the night, or not?

A. I answered you before, Mr. Moore, I told you that while I was there—and I will go a little stronger than that and say that while my brother was in charge 3 or 4 years before I was, we never expected a man to work night and day. A man worked a good day's work when he got up at 6 o'clock in the morning and worked all day and then banked his fire at 6 or 7 o'clock at night.

Q. Where did he sleep during the night?

A. He slept aboard the barge.

Q. He slept aboard the barge whether there was coal actually being taken out of the barge, or not, did he, under those circumstances? A. Yes, sir.

Q. When was it with reference to the time that you got into this little trouble, and after you had made that accusation against that other man, that your father lost the trimming contract?

A. Oh, he lost the trimming, and also Mr. Mills—

Q. (Intg.) Your father and Mr. Mills, yes, I

(Testimony of David G. Powers.)

want to put that in too—when was it they lost that contract? A. After I got into trouble.

Q. After you got into trouble? A. Yes, sir.

Q. It was immediately afterward, was it not?

A. I believe so, yes, sir. [667—611]

Q. Since that time you have felt very bitter against the Western Fuel Company, have you not?

A. No, sir, not a bit.

Q. Have you ever said that you were going to get even with any of them? A. I did not.

Q. You never have made that statement, for example, with respect to Mr. J. B. Smith?

A. I did not.

Q. At any time? A. No, sir.

Q. You never said you were going to get them?

A. No, sir.

Q. You never have said that you were going to get any of these defendants, have you?

A. No, sir. Why, Mr. Mills is a particular friend of my father; in fact, he is up to his heels in debt to him—

Mr. ROCHE.—Well, never mind about that.

Mr. STANLEY MOORE.—That is another instance of his volunteering matters, your Honor, that we feel we ought to go into.

The COURT.—Just answer the questions that are asked you, Mr. Powers, and you will get along much better and much quicker.

Mr. STANLEY MOORE.—Q. Since this trial has been going on, have you had anything to say to Mr.

(Testimony of David G. Powers.)

Mayer, for instance, the gentleman sitting over there?

A. One day I met him outside the door, the day you had me arrested, and he started to blow at me with his mouth, to make noises with his mouth, and I told him not to make noises with his mouth but to put up his fists; that was all.

Q. In whose company was he at that time?

A. I don't know; Mr. Howard came out behind him.

Q. In whose company were you?

A. The detective was waiting for me. [668—612]

Q. Did you speak to him first or did he speak to you first, or did he make a sign first, or did you make a sign first?

Mr. ROCHE.—You are talking now about the arrest the other day, are you?

Mr. STANLEY MOORE.—Yes, I am talking about the encounter between himself and Mr. Mayer.

Mr. ROCHE.—It was a verbal encounter on the part of Mr. Mayer and a fistic encounter evidently on the part of Mr. Powers.

Mr. STANLEY MOORE.—Well, we will see. I know what his first version of that is; I want to know what the last chapter of it will be.

A. (Continuing.) Mr. Mayer started to make noises with his mouth, while the detective was waiting for me, and I told him to shut up his mouth and put up his fists if he had anything to say or do.

Mr. ROCHE.—Q. And what became of the defendant Mayer then?

(Testimony of David G. Powers.)

A. He sneaked behind Mr. Howard.

Mr. STANLEY MOORE.—Q. Mayer started it, did he? A. Yes, sir.

Q. And you testify to that positively, do you?

A. Yes.

Q. It is not the fact that without his having made any recognition or other sign to you you called him a dirty Jew and told him you were going to get him; that is not the fact, is it?

A. No, it is not the fact.

Q. Do you remember a man by the name of Desmond, John Desmond, who used to work with you in the Union Iron Works, or whatever iron works that was—the Risdon? A. Yes, sir, I remember him.

Q. He is a tubman now in the employ of the Western Fuel [669—613] Company?

A. Yes; he has been there for years.

Q. You have known him a long time, have you?

A. Yes, sir.

Q. Did you ever meet him, since this trouble came up? A. Yes, I have.

Q. Did you ever have any conversation with him in which you said anything about Mayer?

A. I never mentioned anything about Mayer.

Q. Did you meet him, in the last part of last year, on the street?

A. I told you I met him, but I don't remember the date.

Q. Do you remember meeting him in June of last year, on the street, and saying, "I am going to get that Jew, Mayer?" A. I did not.

(Testimony of David G. Powers.)

Q. You said nothing of that kind? A. No.

Q. Do you know a man by the name of John Linehan, who also works for the Western Fuel Company? A. I do.

Q. Have you ever stopped and talked with him?

A. Not that I remember of, no, sir.

Q. You don't remember that? A. No, sir.

Q. Do you remember meeting him at any time since this trouble commenced? A. No, sir.

Q. Do you ever remember saying, "How is that Jew blankety-blank"?

A. I could not say it when I don't remember meeting him.

Q. Do you say you did not say that to him?

A. Certainly, I did not say it.

Q. And did you also say to him, "I am going to make him sweat"? A. I did not.

Q. Either in those precise words or in substance that? A. I did not.

Q. Do you know a man by the name of Frank Foran, a man whom you knew while you were in the employ of the company? [670—614]

A. You mean Frank Foran of the office?

Q. Yes; did you ever talk to him about this matter?

A. I never saw Mr. Foran excepting one time when he would not talk to me, on Kearny street, since this indictment.

Q. Did you ever meet him in a candy-store here?

A. Yes, I met him in a candy-store at the time the Elks went away; it was down at the Ferry; they went to Portland.

(Testimony of David G. Powers.)

Q. When was that?

A. I should judge that was about two years ago.

Q. Was it since these troubles started?

A. Before the trouble started.

Q. Was it after you came over here again? You spoke about Mr. Ed Smith being released from Folsom; I am not going to dwell on this, but it was after you came out of the County Jail, was it?

A. Yes, sir.

Q. Do you recall saying anything to Mr. Foran about the case?

A. I never said anything; how could I say anything? That was before the case ever came up.

Q. Did you say anything to the effect that you were going to fix any body? A. I did not.

Q. You never said that you were going to fix Mr. Smith? A. No, sir.

Q. I mean J. B. Smith? A. No, sir.

Q. Or that, in substance? A. No, sir.

Q. Is it not a fact that instead of being a friend of Mayer's that you and he never have been friends?

A. We have always been friends. I was up on the track talking to Mayer after I was released from the County Jail. He was shaking my hand; I was talking with him.

Q. Do you mean to say that you and Mayer have always been [671—615] good friends?

A. Always been good friends.

Q. You have always been good friends?

A. Yes, sir.

Q. When was it you were up on the bunkers after

(Testimony of David G. Powers.)

you were released from the County Jail?

A. Shortly after I was released from the County Jail; I don't know the exact date; I dropped up to see Mayer.

Q. About what was the date you came out?

A. I came out on the 2d of July and I was up there only a few days afterward. * * *

Mr. STANLEY MOORE.—Q. On how many occasions were you up on the bunkers after you came out of the County Jail? A. Once.

Q. When was it, Mr. Powers, that you first talked with Mr. Tidwell respecting these matters?

A. Sometime I believe, in August, 1911, I believe, or 1912.

Q. Do you recall in what particular portion of August, 1912, that was? A. No, sir.

Q. Was it in the first part or the last part of August, according to your recollection?

A. I don't remember the exact date.

Q. How long after your first meeting with him was anything said betwen you and him as to his giving you or obtaining for you a job or position?

A. I don't remember the exact date. I know that Mr. Tidwell put me to work shortly afterward, shortly after I was talking to him.

Q. How shortly after you had the talk with him—not a matter of days I don't mean, but you can fix it by saying how many weeks after you first had the talk with him was it that he put you to work?

A. It may be a week or two; I am not sure. [672—616]

(Testimony of David G. Powers.)

Q. That is according to your best recollection?

A. Yes, sir.

Q. And when he put you to work you were put on the pay-roll, were you? A. Yes, sir.

Q. And in the capacity of a customs agent, I think you call it? A. Yes, sir.

Q. Was there anything said about his giving you that position prior to the time that he actually gave it to you?

A. Well, there was nothing said about giving me the position; he was going to look it up.

Q. What do you mean by saying he was going to look it up?

A. I suppose he was going to think over the facts and figures and the dates and different statements I made to him.

Q. Did you make some proposition to him?

A. In what way—I don't understand your question.

Q. You say he was going to think it over and look up the facts and figures that you had given him, and so I ask you had you made some proposition to him?

A. I made no proposition. The only thing was I told Mr. Tidwell about these people.

Q. Why was it he was to think it over with regard to giving you a position, if that is why he was to think it over?

A. I don't know; Mr. Tidwell can answer that better than I can.

Q. Was anything said about a position at the time?

A. I was to be employed as a customs agent; that was about all.

(Testimony of David G. Powers.)

Q. What was said about that, Mr. Powers? That is your conclusion that you were to be employed as a customs agent; I am asking you now what was said.

A. About what?

Q. To the effect that you were to be employed as a customs [673—617] agent?

A. Oh, Mr. Tidwell just said that he would think it over and look it over and that I was to be employed as a customs agent.

Q. For how long? A. For a period of 90 days.

Q. Was that mentioned at that time?

A. It was.

Q. Was anything said as to what, if anything, was to be done in regard to employing you after that?

A. He never made any special promises.

Q. He never made any special promises; what do you mean by that?

A. Well, he never came right out and made any promise to me, or anything of that kind.

Q. You say he never came right out and made any promise; what did he say?

A. I just told you that Mr. Tidwell said he would look into the facts and that I was to be employed as a customs agent, but he didn't make any other promise.

Q. What proposition, or what, if anything, did you say to him about being employed as a customs agent?

A. Nothing. I told Mr. Tidwell about these people you are defending.

Q. What, if anything, did you say to him after

(Testimony of David G. Powers.)

you told him about these people that are the defendants here in regard to being employed?

A. I never said much; I don't remember of saying anything to him afterwards.

Q. How did he come to say to you that he would think it over about employing you as a customs agent?

A. Well, I don't know what Mr. Tidwell had in his head.

Q. I understand that, Mr. Powers, but you know what you had in your head; did you express anything to him as being in your mind in regard to being employed as a customs agent in response to which Tidwell said he would think it over? [674—618]

A. No, I never spoke to him.

Q. Do you mean to say you did not make any proposition of that kind to him? A. I did not.

Q. You say he never has come right out and promised anything in regard to the length of time that you were to be employed; how long did you figure that you were going to be employed by the Government with respect to the trial of these cases?

A. Oh, I figured that the Government would give me the square deal.

Q. What do you mean by the square deal?

A. That when I showed them something they would give me a chance to make good.

Q. What do you mean by "a chance to make good"? A. To make a living.

Q. You figured that you would be regularly employed, do you mean? A. Yes, sir.

(Testimony of David G. Powers.)

Q. You would become a permanent official of the Government? A. Yes, sir.

Q. Then you did have something in your mind about getting a job, did you not?

A. Well, I thought they might, but that was not my reason for telling him.

Q. Well, without regard to what your reason was, you did think that they might give you a job?

A. Yes, sir.

Q. And you thought it ought to be a permanent job? A. Yes, sir.

Q. None of those 90-day propositions; is that right? A. Yes, sir.

Q. You thought that instead of the 90-day proposition they ought to change it into a permanent proposition, did you not? A. Yes, sir. [675—619]

Q. You say that Mr. Tidwell did not come right out and promise you that; did you ask him for a permanent job? A. I did not.

Q. You did not? A. No, sir.

Q. You were angry with him were you not, when you found out he was not going to continue you permanently in the employ?

A. I was not, no, sir.

Q. You were not?

A. No, sir. He is not running the Government.

Q. Sir.

A. He was not running the United States Government.

Q. Who was it you were angry with in the Government, if anybody? A. Nobody.

(Testimony of David G. Powers.)

Q. Did Mr. Tidwell state to you that he was trying to keep you continued on? A. No, sir.

Q. Well, you were disappointed then—we will put it that way—when you found that the job was not going to last indefinitely, were you not?

A. Well, I would not say I was disappointed.

Q. It had lasted a year, had it not? A. Yes, sir.

Q. Outside of this business of your father and Mr. Mills, had you ever worked steadily on a regular salary for anybody, corporation or individual, in your life, for the continuous space of a year before you got this job as Special Agent which lasted from August, 1912, to August, 1913?

A. No, only the Western Fuel Company.

Q. Were you ever on a regular monthly salary with them for as long as a year? A. No, sir.

Q. This was the first time, was it not, that you had been in a job on a regular monthly salary for a year?

A. Yes, sir. [676—620]

Q. Did Mr. Tidwell say anything to you in that conversation in regard to opium? A. Yes, sir.

Q. What was the first thing that you did in your employment that Mr. Tidwell gave to you after thinking the matter over?

Mr. ROCHE.—One moment; that is objected to as being immaterial.

The COURT.—It seems so.

Mr. STANLEY MOORE.—Very well, your Honor, we note an exception.

Q. Don't answer this question until the Court rules upon it. You mentioned to Mr. Tidwell be-

(Testimony of David G. Powers.)

sides this Western Fuel business also things in regard to opium, did you not, when he had this conversation with you when he said he would think it over and let you know?

Mr. ROCHE.—The same objection, your Honor.

The COURT.—The same ruling.

Mr. STANLEY MOORE.—We note an exception.

Q. Did Mr. Tidwell at that time, either at the time of the first conversation, or when you were first employed as a Special Agent, say anything to you about any compensation that might come to you out of these matters, aside from and distinct from any question of salary as a Special Agent? A. He did not.

Q. You are positive in regard to that, are you?

A. Yes, sir.

Q. Did he say anything to you at that time with respect to any proposition made by you that he thought he better write back to Washington in regard to that matter? A. He did not.

Q. He never said anything about corresponding with respect to entering into any arrangement as suggested by you?

A. Not that I know of. [677—621]

Q. Now, Mr. Powers, I want to ask you again, you have repeatedly read in the papers that you were to receive a percentage of the fines recovered in the event of conviction, have you not?

A. I don't remember.

Q. Sir? A. I don't remember.

Q. Do you mean to be understood as now testifying that you can not recall the circumstance of hav-

(Testimony of David G. Powers.)

ing repeatedly read in the newspapers of this city and county the statement that you were to be rewarded by a percentage of the fines recovered?

A. I may have; I don't remember.

Q. What did you testify in answer to that question, when you were asked this morning, do you remember? A. I don't remember.

Q. Do you remember whether or not this morning, you were asked that question?

A. Yes, sir, and you showed me several clippings.

Q. And I asked you too, did I not, if you gave that information and you said you did not; then did I not also ask you whether you read statements of that kind appearing in the newspapers; do you remember that? A. Yes.

Q. What was your response?

A. I told you that any statements in the newspapers that I made to the reporters, that I made the statements, that I may have, but I did not remember reading the other statements.

Q. Did you not admit or testify this morning that you did read the articles containing such statements in the newspapers, but that you yourself had not furnished them?

Mr. ROCHE.—I object to that, if your Honor, please, as a misstatement of the testimony given by the witness this morning, and that his answer this afternoon is exactly in accord with his testimony given this morning. [678—622]

Mr. STANLEY MOORE.—The record will show whether it does or does not. My recollection of his

(Testimony of David G. Powers.)

testimony is that he did testify this morning that irrespective of the authorship of the statement and eliminating himself he had read that statement in the newspapers.

Mr. ROCHE.—Counsel is inaccurate in that statement, may it please the Court, because the witness said that while he might have read those portions of the articles relating to rewards, he had no recollection that he did read them and he had no remembrance on that subject, and that is exactly in accord with and likewise consistent with the testimony given by him this forenoon.

Mr. STANLEY MOORE.—That testimony was addressed to a particular article and what was said about a statement coming from a particular person, namely, Mr. Tidwell. It was not addressed to the general proposition as to whether he had or had not read or heard such statements as that.

The COURT.—Well, the situation is this, gentlemen, that the actual testimony of the witness will be at your disposal as soon as it is transcribed; now, proceed and ascertain what he says concerning that matter now.

Mr. STANLEY MOORE.—Very well, your Honor.

Q. What is the fact, Mr. Powers, as to whether or not since this trouble has been on, you have from time to time seen in the newspapers statements to the effect that you were going to receive a portion of the fines? A. I may have; I really don't remember.

Q. You don't remember as to having seen state-

(Testimony of David G. Powers.)

ments of that character?

Mr. ROCHE.—That question is objected to upon the ground that it has been asked and answered a dozen times. [679—623]

The COURT.—That is true; that is what he has said.

Mr. STANLEY MOORE.—Q. In many of these papers, you have given out interviews yourself, have you not? A. I have.

* * * * *

Mr. STANLEY MOORE.—I will ask you this question: have you spoken to Mr. Tidwell during the time that the newspaper articles containing various statements have been appearing with reference to this subject matter,—have you ever gone to Mr. Tidwell and said to him, “Am I to get any percentage of the fines that may be recovered”?

A. No, sir.

Q. Have you ever spoken to him upon that subject in any way, shape or form?

Mr. ROCHE.—You mean as to fines that might be inflicted in this case?

Mr. STANLEY MOORE.—Yes, or as to any fines or rewards that might come to him from the Government?

A. No, sir.

Q. I am not limiting it, Mr. Powers, to this particular case now in question, and I want you to understand that; I mean fines or money or penalties or a percentage of them that may come to you either as a result of fines inflicted in this case or as the result

(Testimony of David G. Powers.)

of penalties or recovery of money that may be made by the Government in some other case?

A. No, sir.

Q. Or any reward whatsoever so far as the Government was concerned, unless it would be in connection with a position? A. No, sir.

Q. Is your answer the same? A. The same.

Q. Mr. Powers, do you recall ever seeing in any of these papers any statement by any Government official, or what purported to be a statement by any Government official to the effect that [680—624] what were termed in the articles “civil suits” were to be brought? A. No, sir.

Q. Do you recall seeing any such thing as that?

A. No, sir.

Q. Have you thought over the matter of civil suits or criminal suits?

A. I am not a lawyer and I don't know anything about it.

Q. And you still don't know any distinction, if there is one; is that right? A. Yes, sir.

Q. And you have no recollection of seeing in the newspapers that any other action was to be instituted by the Government save and except the criminal action now pending?

A. I don't remember seeing it.

I saw the defendant Mayer with his foot on the expose rod of the scales at Mission street dock No. 2 both before and after the discharge of the “Dumbarden.” It occurred many times before the discharge of the “Dumbarden.” It was a common occurrence.

(Testimony of David G. Powers.)

I saw him do it in 1905. That was at Mission street dock, at the scales-house; and those were the scales where the weighing-house was on the level of the track, the track being laid along the top of the bunkers. I don't remember the scales-house being changed with reference to its location. The scales-house was always in that position so far as I remember. I have been up to the bunkers frequently. As long as I can remember the scales-house was out on the outer end of the bunker. The cars were operated there by a third rail. They used not to have the third rail. The cars then ran by steam. But they had the third rail down there as far back as I can remember. I cannot remember how they ran the cars before or what the motive power was.

Q. You testified here yesterday that during these [681—625] years, 1902 and 1903 and 1904, and from 1904 to 1908, that you were friendly to Ed Mayer, and even from 1902 to 1904, and that you used to go around there and chat with him, that he was your friend? A. Yes, sir.

Q. And you said he used to be down there at the Mission Street bunkers at that time, because from 1902 to 1904 the Fuel Company did not yet have the Folsom Street bunkers at all; is that correct?

A. I testified that during that time the Folsom Street bunkers were conducted by Dunsmuir during a part of that time.

Q. From 1902 to 1904, that period that you were testifying about yesterday, you said that Mr. Mayer was mostly at Mission No. 2, as you called it, although

(Testimony of David G. Powers.)

sometimes he would be around at Green Street and at other places, but as I understood your testimony, he was mainly there, he was to be found there; is that correct?

A. He was between both places; at one time you would find him at Folsom Street, after the Western Fuel took charge of the Folsom Street bunkers; then you would find him at Mission Street during that time, most of the time.

Q. I am talking about 1902 to 1904; he was, as I understand you, mainly at Mission Street, was he not? A. From 1902 to 1904, yes, sir.

Q. And you used to go over there and chat with him, you were friendly with him? A. Yes, sir.

Q. What was the motive power for the cars that were propelled along the rails on top of that bunker on Mission Street No. 2, when you used to go over and talk with Mayer in 1902, 1903 and 1904?

A. I have forgotten. They used to use steam, at first, and then they used electricity afterwards.
[682—626]

Q. What were they using in those years?

A. I have just told you I have forgotten; they used steam at first, and afterwards they used electricity.

Q. How did they use the steam?

A. They had a boiler downstairs, which would supply steam for hoisting the coal out of the holds of ships into the bunkers.

Q. How did they make the cars move up and down the track?

A. They used to use steam, at one time. They

(Testimony of David G. Powers.)

used steam also at the Mail Dock.

Q. You do not even remember, and did not observe it closely enough to know what the propulsion was that was sent into those cars that caused them to move, do you, during 1902 to 1904, when you say you used to go up there very often?

A. In 1902, I have forgotten.

Q. Is it not the fact, that you were on those bunkers very, very, very seldom during that time?

A. I was on there many times.

Q. Where was the weigh-house during that time?

A. At the end of the bunkers.

Q. Are you positive of that? A. Yes, sir.

Q. Is it not the fact that during that time it was at the shore end of the bunkers, and not out toward the middle of the bay? A. No, sir.

Q. Do you remember the circumstances of it being changed at the time they changed the motive power of those cars, and moving it clear back to the other end of the wharf, where it was until the wharf was given up? A. I do not.

Q. The weigh-house was on the level of the track when you used to remember it? A. Yes, sir.

Q. On what level was the weigh-house with respect to the rails [683—627] of the track in 1902 and 1903, and along that time when you used to go there very often?

A. It was right over the track.

Q. Is it not the fact that it was way up above the track, in the same way that the weigh-house is on the Folsom Street bunkers to-day?

(Testimony of David G. Powers.)

A. I don't remember that.

Q. You don't remember that? A. No, sir.

Q. You have been up on the Folsom Street bunkers, too, have you not? A. Yes, sir.

Q. About how many times, all told, as long as you have been connected to and with the Western Fuel Company, or employed by it, do you say you have weighed coal on those Folsom Street bunkers?

A. I don't know the exact number of times.

Q. I don't expect you to be able to state the exact number, but approximately; would it be a dozen times?

A. At the Folsom Street bunkers?

Q. Yes?

A. Perhaps more, perhaps less; I don't remember.

Q. Would it be four times?

A. I don't remember.

Q. What is the number of the offshore bunkers on that Folsom Street dock?

A. I have forgotten the number of offshore bunkers. They are all pockets, the offshore bunkers are all pockets.

Q. Well, call them the offshore pockets, what is the number of the offshore pockets on the Folsom Street dock?

A. I have forgotten the number of the offshore pockets.

Q. What is the capacity of the scales on the Folsom Street dock bunkers? A. I really don't know.

Q. You don't know the capacity of the scales, yet you say you [684—628] have weighed there?

(Testimony of David G. Powers.)

A. Yes.

Q. You don't know. Now, you mentioned yesterday an episode of a link, and the name of the custom weigher by the name of Murray?

A. Yes, and also Mr. Freund; I forgot to mention his name to you.

Q. You also testified that you had witnessed the discovery by Mr. Moore, and we will put in Mr. Freund, of that bent link, did you not? A. I did.

Q. Whereabouts were you at the time they discovered it? A. I was on the track.

Q. On the track; where were you on the track, with respect to the weighing-house?

A. Right near the weighing-house.

Q. How close were you to the train?

A. A few feet from it, perhaps ten feet—five or ten feet.

Q. Five or ten feet? A. Yes.

Q. And yet you say you never took the trouble to look at the link? A. No.

Q. Now, you testified yesterday, that you did not pay any attention to it, did you not? A. Yes.

Q. Now, the fact of the matter is, that there are two scales down there on the Folsom Street bunkers, you know that, do you not without reference to what their capacity is? A. Yes.

Q. For instance, we will say this standing desk represents the weighing-house, there is a track comes down this side, the far side of the courtroom, and there is a scales alongside the weighing-house, on that track, is there not, there? A. Yes.

(Testimony of David G. Powers.)

Q. Then that track extends on and bends over and runs into another track, and you can switch it back and go back by the track that passes alongside the other side of the scales-house, which we [685—629] will take, following the illustration, to represent the space between the jury and that standing desk, is there not? A. Yes.

Q. Now, it is a fact, is it not, that when they test those scales, one of the parts of testing the scales down there is to take loaded cars, weigh them on the scales on this side, the first scales to which the cars come to, after being loaded from the hoppers, and then they take them around to this side, as they might be taken on their way back to part of the bunkers and weigh them there?

A. That is done occasionally, once in a while, but not always.

Q. How often were you up there?

A. Many times.

Q. Well, it is, whether done frequently or infrequently, one of the methods used in regard to testing the scales? A. Occasionally, yes.

Q. I say whether occasionally, frequently or infrequently; now, isn't it a fact that when they test those loaded cars in that case on one scales, they carry them around, put them on the other scales, and the weights being different, an examination is made—that is the fact of the matter, isn't it?

A. Mr. Murray, when he took the scales and brought them around the other side, then he saw the difference in the weight. Mr. Freund—

(Testimony of David G. Powers.)

Q. You did not pay any particular attention to the matter at the time, did you? A. No.

Q. You never even took the trouble to look at this link? A. No.

Q. Till the blacksmith, as you called him, was sent for, and so far as you knew he took the link out, though you don't know even whether he did or not?
[686—630]

A. I saw him go up there and take the link out, but I did not examine the links.

Q. The blacksmith was sent for and took the links out? A. Yes.

Q. Now, coming back, for a moment, to the Mission Street bunkers, and recurring to this matter about Mr. Mayer having his foot on the beam, is it or not a fact that after the scale-house was moved down to the end of the wharf, which was the after end or, as you describe it, the end nearest the bay, that the scales were on the level with the track, and the beam was boxed up, covered up, and a man could not put his foot on it? A. It was opened up.

Q. That is not correct?

A. No, the beam was open.

Q. How was the beam on the Folsom Street bunkers, in the weighing house? A. Boxed up.

Q. Boxed up? A. Yes.

Q. Who was present ordinarily when "lime juicers," or whatever they may be termed, are discharging their cargoes into the bunkers—who was present ordinarily, if anybody, besides the custom-house weigher?

(Testimony of David G. Powers.)

A. Well, Mr. Mayer is always present.

Q. Mr. Mayer is always present; and who, if anybody, in addition, then, to the custom-house weigher and Mr. Mayer is present upon those occasions?

A. Some poor, unfortunate sailor that can't write his own name, sometimes.

Q. Who sends that poor, unfortunate sailor, who can't write his own name, to be present upon these occasions?

A. I really don't know who sends him down.
[687—631]

Q. Do you know whose representative he is, or is supposed to be?

A. I suppose the captain of the ship.

Q. You suppose the captain of the ship picks out some poor, unfortunate sailor, who can't write his own name, to go up there and check these weights?

A. At times.

Q. Now, then, what, if anything, does the poor, unfortunate sailor, who can't write his own name, have to do in respect to writing down the weights?

A. At times, they don't know how to write down the weights, some of them.

Q. What do they generally do with respect to writing down the weights?

A. They sit there and listen to Mayer talking to them, good-natured talk.

Q. And sing songs? A. No.

Q. Mayer isn't a singer. What, if anything, does the man do after listening to Mayer talking, with respect to writing down anything?

(Testimony of David G. Powers.)

A. I suppose they could hardly write their own name; they get their weights from Mayers at times.

Q. They get their weights from Mayer at times. Did you ever see any of them there who, when the custom-house weigher would make weights, and would write them down in his book, would look over and see what the weight was, and get it from the custom-house weigher and write down the figures, even though he could not write his own name?

A. Yes, I have seen them.

Q. Isn't it the fact that the weighing is done by the custom-house weigher? A. Yes.

Q. And that he has a book in which he enters every weight? A. Yes.

Q. Isn't it a fact that Mr. Mayer is likewise present, and that [688—632] he, too, has a book in which he enters every weight? A. Yes.

Q. Isn't it a fact that the poor, unfortunate sailor also has a book and that he, too, enters every weight?

A. The unfortunate sailor at times don't know how to read, and he gets his weights from Mayer, and there are times there are men that can read and take them.

Q. Were you ever there on the occasion of the discharge of any ship, when the representative sent there by the ship did not write in the book that he has for the purpose, the weights that were recorded by the custom-house weigher? A. I was.

Q. When?

A. During several times, during 1906.

Q. What ship?

(Testimony of David G. Powers.)

A. I don't remember the particular ship.

Q. Several times during 1906; what do you mean by "several"?

A. Well, it would be between 1905 and after that, that time, there was some sailors up there.

Q. Were there times in 1906?

A. Yes, I remember in 1906.

Q. Were there times in 1905? A. There were.

Q. And times in 1904?

A. I won't go back that far; I am not sure.

Q. Now, what ship did that occur with respect to?

A. I don't remember the name of the ship; there were so many tramp steamers coming here I don't remember their names.

Q. Can you remember the name of one? A. No.

Q. Not one? A. No.

Q. Can you remember where their cargoes were from?

A. Lime juices, English ships. [689—633]

Q. English ships? A. Yes.

Q. Do you remember where their cargoes were from? A. No.

Q. Where did they discharge?

A. At Mission Street.

Q. At Mission Street? A. Yes.

Q. Do you remember, did they all discharge at Mission Street? A. All that I remember, yes.

Q. Where was the scales-house, according to your recollection, at Mission Street, in 1904?

A. At the after end of the bunkers, after 1905—I am talking about 1905 and 1906, my recollection as to the bunkers.

(Testimony of David G. Powers.)

Q. What was the capacity of the scales at Mission Street in 1905 and 1906? A. I don't remember.

Q. You don't recall that? A. I don't, no.

Q. Do you remember the name of any captain or any officer connected with any vessel in 1905 or 1906, in connection with which a sailor representing the vessel who could not write down the figures in the book? A. No.

Q. Would that sailor be on the job day after day?
A. He would.

Q. And he would not write down anything in the book?

A. No, he would get his weights from Mr. Mayer.

Q. What would he do with the weights that he got from Mr. Mayer after he got them?

A. I never followed him to see where he goes to.

Q. Would he have any book in his hand?

A. Mr. Mayer would give him the weights.

Q. Well, I know, he would give him the weights, but would the man have any book on his person at the time Mr. Mayer would give him the weights? You have told us Mr. Mayer would give him the weights, but we are trying to find out if the man had any book.

A. What is the good of a book if you can't write into it? [690—634]

The COURT.—Do not argue the question; answer the question.

A. No.

Mr. MOORE.—Q. He had no book?

A. No.

Q. You testify, do you, positively, that you have

(Testimony of David G. Powers.)

seen representatives of the captain of a vessel there that never even had a book in which to record the weights?

A. Yes, in which to keep the weights look out for them.

Q. And on those boats, out of which some sailor would be selected by the captain who was unfortunate and who could not read or write, there would be a number of men employed, would there not?

Mr. ROCHE.—That is objected to on the ground that that is immaterial, and not proper cross-examination, and that this subject matter has been thoroughly investigated and gone over, and upon the further ground that these questions are all argumentative in form.

The COURT.—I don't know on what ground, but I am going to sustain the objection.

Mr. MOORE.—I will withdraw it.

Q. I want to ask you a question, Mr. Powers, and I want you to pay particular attention to it, Mr. Roche, because it will show it was at least a case of "tit for tat." I want to direct your attention to some testimony that the record shows you to have given this morning, and ask you whether this question was asked of you and this answer made by you?

Mr. ROCHE.—What page is that?

Mr. MOORE.—Page 1706.

Q. (Reading:)

"Q. Now, Mr. Powers, have you seen the statement or heard of the statement that you were to receive a part of the fines or penalties recovered?

(Testimony of David G. Powers.)

“A. Yes, sir, I have read that statement.”

Do you recall, Mr. Powers, that question having [691—635] been asked you this morning, and that answer given by you?

A. At the time you made the statement, I really did not understand it.

Mr. ROCHE.—I think in fairness to counsel, may it please the Court, and in fairness to the witness, counsel having the testimony in his possession, ought to read from pages 1712 to the end of this morning's testimony, in which the witness repeatedly testified that while he might have read these statements in these newspapers, he had no recollection of reading them and could not remember whether they were or were not read.

Mr. MOORE.—The witness may have testified differently on that subject, even within a very short space of time, in this morning's examination, but I had it definitely in my mind that when I first asked him, and before there was any backing away, or before he knew where the situation led, he said, “Yes, I read that statement.”

Mr. ROCHE.—That testimony appears from page 1712 to and including page 1720, and the questions are repeatedly put and answers entirely consistent with the testimony given this afternoon were made.

Mr. McCUTCHEN.—He says the same thing distinctly on the next page in answer to another question differently phrased.

Mr. MOORE.—I will go ahead and read this question to him; he may want to look at this, too, but you

(Testimony of David G. Powers.)

can follow me, too, Mr. Roche, and perhaps save some time.

“Q. Now, Mr. Powers, have you seen the statement or heard of the statement that you were to receive a part of the fines or penalties recovered?

“A. Yes, sir, I have read that statement.

“Q. You have read that statement, have you?
A. Yes, sir. [692—636]

“Q. Do you recall reading that statement in the ‘Bulletin,’ the ‘San Francisco Bulletin’ of February 6, 1913, at the time the subpoena was served upon the Western Fuel Company to produce its books? A. Yes, sir.

“Q. And that statement was, in brief, was it not, that you would be rewarded by Uncle Sam with a percentage of any moneys that may be recovered from the accused coal operators?

A. Yes.

“Q. You recall that, do you? A. Yes, sir.”

Now, Mr. Powers, do you recall having been asked those questions, and made those answers this morning, without reference to whether your memory, shortly after that time, began to fail you?

A. I did not understand your statement, as I thought, when you asked me at the time, about reading the statements in the “Bulletin”—I did not understand you when I answered you “Yes,” that you meant about the statements in the “Bulletin,” about getting the reward that you have mentioned several times since—I really did not understand your statement.

(Testimony of David G. Powers.)

Q. Have I ever mentioned the "Bulletin" to you, according to your recollection, prior to the time I put the question to you: "Do you recall reading that statement in the 'Bulletin,' the 'San Francisco Bulletin' of February 6, 1913, at the time the subpoena was served upon the Western Fuel Company to produce its books? A. Yes, sir."

Had I ever mentioned the "Bulletin" to you prior to that time? I am talking about prior to that time. Have you any recollection, Mr. Powers, of my having mentioned the "Bulletin" before I asked you the question, "Now, Mr. Powers, have you ever seen the statement, or heard of the statement that [693—637] you were to receive a part of the fines or penalties recovered," and you answered "Yes, I read that statement."

A. I didn't understand your statement before.

Q. What was it that you didn't understand this question when I asked it: "Now, Mr. Powers, have you seen the statement, or heard of the statement that you were to receive a part of the fines or penalties recovered," and you answered, "Yes, I have read that statement." What was there about my question to you that you did not understand, that you made the answer that you did?

A. Well, I did not understand your statement when you were jumping on me.

Q. What statement did you think that I had reference to? Well, I will ask this, and here I did mention the "Bulletin": "Do you recall reading that statement in the 'Bulletin'—referring to the

(Testimony of David G. Powers.)

statement just put to you, that you were to receive a part of the fines or penalties recovered—Do you recall reading that statement in the ‘Bulletin,’ the ‘San Francisco Bulletin’ of February 6, 1913, at the time the subpoena was served upon the Western Fuel Company to produce its books.” and you answered “Yes, sir.” What was there about that particular question that you did not understand, at the time that I asked it of you, and at the time that you answered it?

A. I said that I had read statements in different papers, but I forget just exactly what they were, and you put the clippings before me.

Q. Well, then, the question was asked of you: “And that statement was, in brief, was it not, that you would be rewarded by Uncle Sam with a percentage of any moneys that may be recovered from the accused coal operators,” and you answered, “Yes, sir.” Now, when I asked you that question, I had asked you the same in effect three times, had I not? [694—638]

A. You might have, I don’t know.

Q. And each time you had answered yes, that you had read them?

A. I did not understand you.

Q. Was there anything that you misunderstood when I asked you the question the first time, the second time or the third time, and if so, what was it?

A. I did not understand your question when you were jumping on me.

(Testimony of David G. Powers.)

Q. Well, now, you answered the questions, didn't you? A. I did.

Q. Did you answer them correctly?

A. As correctly as I can remember, yes.

Q. As correctly as you can remember?

A. Yes.

Q. Well, then, is it your present remembrance that on February 6, 1913, and at other times, you did read in the newspapers the statements that you would be rewarded by a percentage of the fines that should be imposed?

A. I may have read them, but I don't remember. I have read statements, different articles coming out in the papers, but I don't know the exact statements which I have read.

Q. Mr. Powers, have you no recollection as to whether or not in the course of the newspaper articles, time and again, that have appeared concerning these matters, and articles as to which you have contributed the information in part, if not in whole, that the statement was there repeatedly contained that you were to receive a percentage of the fine?

A. I may have, but I don't remember.

Q. I am asking you, you have absolutely no recollection, then, either one way or the other?

* * * * * * *

A. No, I don't remember one way or the other in that case. I might have read the papers and I might not have. I have forgotten. [695—639]

(The witness here took the stand to make a correction in his testimony of the day before, which cor-

(Testimony of David G. Powers.)

rection was in the words following:)

“The WITNESS.—(Continuing.) Mr. Tidwell—at the time I was sent to the custom-house, I was sent there through a letter, or rather it came about through a letter, and I went to Mr. Tidwell’s office, it was prior to that I saw Mr. Masters and Mr. Leo Mayer—not Mr. Leo Mayer—yes, Leo Mayer, of the ‘Bulletin,’ and when I went into Mr. Tidwell’s office, I went in there without knowing anything about a reward or anything, only to keep myself going before a Grand Jury, on account of a letter sent out of the Alameda Jail by Mr. Feedler. When I went there I did not ask for any reward or any reward or anything, but Mr. Tidwell did explain to me about a reward that would come through a custom law but not for sending anybody to jail or anything like that. It came through the money which was received back from the people who had defrauded the Government. But at the time that Mr. Moore was questioning me, I was confused, I thought he was talking about fines, sending people to jail or such as that.”

I have not discussed my testimony with anyone since yesterday, except that I went to Mr. Roche and I told him that I had thought over the testimony, and that I had made mistakes. I told Mr. Roche about the mistakes. He did not tell me that [696—640] I had made the mistakes.

Q. Mr. Powers, as I understand your testimony,

(Testimony of David G. Powers.)

you figured from the time that you were first made a Special Agent that you would make good, to use your expression, and would become a prominent and regular official of the Government, did you not?

A. There was no promise made about that, but I thought they would make me permanent.

Q. You expected that by reason of making good that would be the upshot or result of the matter, did you not? A. Yes.

Q. And when did you first come to know or come to think that that might not come about?

A. When I was told about it by Mr. Tidwell.

Q. And when was that, about what date, please?

A. I don't remember the date, Mr. Moore.

Q. About is all I am asking you, approximately, how long ago was that?

A. I should judge about three months before I left, two months or so before I left the service of the Government.

Q. Well, when was it that you left the service of the Government?

A. Somewhere around August, 1913, I believe.

Q. Well, then, was it within the life of the last month of the series of 90-day appointments as customs agent—was it during the life of that particular appointment, the last one that you received?

A. Yes.

Q. Then it was within 90 days of the 1st of August, 1913? A. Yes, sir.

Q. Can you fix it any closer than that with respect to how much nearer, if at all, it was to Au-

(Testimony of David G. Powers.)

gust 1st, 1913? A. No.

Q. And up to that time you had expected that you would become a permanent and regular official of the Government? [697—641]

A. You mean up to the time that I quit?

Q. No, up to the time that Mr. Tidwell made this statement to you? A. Yes.

Q. Now, you testified as a witness, did you not, upon the trial of Robert Donaldson? A. I did.

Q. I want to ask you, referring to page 51 of the record upon appeal, the printed official record upon appeal in that case, whether upon that occasion, on the 23d day of November, 1912, in this courtroom, or the other courtroom down the hall, in the presence of the Court, the officers of the Court, the attorneys and the jury, these questions were asked of you and these answers made by you—

Mr. ROCHE.—Are you reading from the printed record on appeal?

Mr. STANLEY MOORE.—Yes.

Mr. ROCHE.—Have you a copy of it?

Mr. STANLEY MOORE.—No; I can read it to him and then show it to you?

“Q. What is your business now? A. Nothing.

Q. Have you been in the employ of the Government in any capacity since you came out of jail?

A. Yes, sir.

Q. What capacity? A. As customs agent.

Q. Are you a customs agent now? A. No, sir.

Q. When did you cease to be a customs agent?

A. The other day.

(Testimony of David G. Powers.)

Q. What day? A. Saturday.

Q. Last Saturday? A. Yes, sir.

Q. When do you expect to be a customs agent again?

A. I do not expect to be a customs agent again.”
[698—642] Were those questions asked of you and those answers made by you upon that occasion?

A. Many questions were asked and answered and I said, I did not know, as it was my understanding, when I would become a customs agent again.

Q. The date of that testimony was November 23d, 1912. You were asked there, were you not, as to whether you expected to become a customs agent again?

A. Not that I remember of. I remember they asked me when I expected to become a special agent again, and I said I did not know.

Q. Well, do you recollect their asking you the question when you expected to become a customs agent again? A. Yes.

Q. You remember that? A. Yes.

Q. When do you expect to be a customs agent again? A. Yes.

Q. What now do you state the answer to have been that you made to that question?

* * * * * * * *

A. I said I didn't know. That was my remembrance.

Q. Do you deny, Mr. Powers, that on that 23d day of November, 1912, while you were testifying under oath in that criminal prosecution the answer was

(Testimony of David G. Powers.)

made by you, "I do not expect to be a customs agent again? A. Not that I remember of.

Q. I say do you deny that you made the answer that I have just read to you?

* * * * *

A. I do deny it as far as I can remember, yes. As far as I can remember I do not remember saying that. My memory is, if I understood that question right, I said I didn't know when I would [699—643] become a special agent again.

Q. You think then that that also is a question that you may have misunderstood like these other questions that I have asked of you the other day?

A. Yes.

Q. And your recollection is that you did not make the answer which I have just read to you, so far as your recollection serves you in the matter?

A. Yes.

It was a few days before the trial of the Donaldson case that I ceased to be a customs agent in the employ of the Government. It was within a few days thereafter that I became customs agent again, but I cannot remember that it was the very next day after the conclusion of that trial. While I was testifying in the Donaldson case I had it in my mind that I was to become a customs agent again. But I didn't know when.

Q. Mr. Powers, have you ever heard of the sugar case back in Philadelphia where some large fines were recovered by the Government?

A. I think I have.

(Testimony of David G. Powers.)

Q. You say you think you have? A. Yes.

Q. What do you mean by that?

A. I think I have read about that.

Q. You use the expression "I think"; do you mean by that that according to your recollection you have heard about it?

A. I believe I have. I think I have; I am not sure.

Q. You believe you have?

A. That is what I meant by that; I might have heard about it, but I mean I don't know all about it; I didn't understand you.

Q. But without knowing the actual facts of the case, you think you have heard people speak of them to you, do you not? [700—644] A. Yes.

Q. Who was it that made mention of it to you according to your recollection?

* * * * * * * *

A. I don't know who mentioned it to me.

Mr. STANLEY MOORE.—Q. When was it that you first learned about it? A. I don't remember.

Q. No recollection? A. No.

Q. Well, what, if anything, was said to you by this party, whoever he might have been, with respect to the statement of fines and rewards and compensation in connection with that case, if anything?

A. I don't remember that.

Q. Well, what was said about the case? Don't you recall as to whether or not it was said a very large fine had been imposed in the case?

* * * * * * * *

A. There might have been; I don't recall.

(Testimony of David G. Powers.)

I do not remember that anything was said about persons who had given the information receiving a large sum of money as a percentage of the fine in that other case. I have only said that the other case might have been mentioned to me by somebody. I do not remember definitely whether it was mentioned or not. I have no definite recollection one way or the other.

[Endorsed]: Filed Jan. 19, 1915. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [701—645]

BE IT REMEMBERED that thereupon the following testimony was given and that the following proceedings occurred:

Q. I will ask you this question, Mr. Powers: Have you not yourself stated that you expected to get a very large amount of money out of this case, and when asked how you expected to get that, have you not stated that there was a sugar case back there in Philadelphia, and the man who gave the information there got a very large amount of money, which was a percentage of the fine? A. No, sir.

Q. Do you testify positively, Mr. Powers, that you have not made that statement here in the City and County of San Francisco?

A. I am testifying to everything I can remember. I testify that I do not remember making any statements like that.

Q. The question is, whether or not you testify to that positively or not, or merely is it your answer that you don't remember making any statement like

(Testimony of David G. Powers.)

that? As I understood your answer first, it was that you positively answered "No," you had not made any such statement. Is that correct, or is it that you don't remember?

A. I don't remember ever making any such statements.

Q. That is the very point of the question that I am attempting to address you. Do you undertake to say here positively and as a matter of fact, that no such statement has every been made by you?

A. Yes, I can say to that, according to my own mind, yes.

Q. When you say "according to your own mind," you mean according to your recollection, or is your mind clear on that, and are you able to positively deny that you ever have done so?

A. I am testifying that as far as I can remember anything I can remember of—I am testifying positively to what I can remember. [702—646]

Q. I have to recur to the question again: I want to ask you now again, can't you recollect as to whether, in point of fact, you have made any such statement as that? A. I cannot recollect.

Q. Do you undertake to testify positively before this Court and jury that you have made no such statement as that?

A. Yes, according to my mind; I cannot remember ever making any such statement.

Q. The question is, are you positive that you did not.

Mr. ROCHE.—Now a minute. That question is

(Testimony of David G. Powers.)

objected to upon the ground that it has been asked and answered at least ten times within the last five minutes.

The COURT.—I would not go up as high as ten, but the objection will be sustained.

Mr. STANLEY MOORE.—We note an exception.

Q. I want to ask you further in that connection, Mr. Powers, if you have not also told about this case and said that you expected to get as much as \$60,000 or \$75,000 out of the Government in this case?

A. No, sir.

Q. Now, you testify positively to that?

A. Yes, sir.

Q. You testify positively that you have made no such statement as that? A. Yes, sir.

Q. Do you recall having stated to anybody any sum of money as one that you expected to receive from the Government in this Western Fuel matter.

A. Yes, I have spoken about it.

Mr. STANLEY MOORE.—Q. Sir?

A. I have spoken about getting some money I believe for—I don't know—for the coal that was recovered, or rather, for anything that was recovered by the Government. [703—647]

Q. To whom have you spoken in that way?

A. I have spoken to Mr. Tidwell about it.

Q. Anybody else?

A. I may have spoke to several.

Q. You say you may have? A. Yes, sir.

Q. Have you any recollection of the names of the other parties to whom as a matter of fact you have

(Testimony of David G. Powers.)

spoken? A. No, sir.

Q. Have you no recollection of the names of anybody you talked to on that subject save and except Mr. Tidwell? A. I may have.

Q. I am asking you if you cannot recall the names of persons other than Mr. Tidwell to whom you have spoken about it?

A. I may have spoken to my wife about it; maybe to some others about it, but I don't remember about it.

Q. You may have spoken to her about it?

A. Yes, sir.

Q. Now, outside of Mr. Tidwell and outside of her, can you recall having mentioned it to no one else? A. Yes, Mr. Paulsen.

Q. Who? A. Mr. Paulsen.

Q. Who is Mr. Paulsen?

A. Mr. Paulsen is a school teacher in Oakland; he lives across the bay.

* * * * *

Mr. STANLEY MOORE.—Q. Do you recall having spoken to your father-in-law about it?

A. No, sir, I never have spoken to him about it.

Q. You never have? A. No, sir, I have not.

Q. Mr. Powers, what, if any, amounts, were mentioned in the conversations between yourself and Mr. Tidwell? A. A percentage of 25 per cent. [704—648]

Q. A percentage of 25 per cent of what?

A. Of the amount that the Government got back, the amount that the Government was defrauded of.

(Testimony of David G. Powers.)

Q. Of the amount that the Government got back, the amount that the Government was defrauded from?

A. The amount of duty the Government was defrauded out of.

Q. Was anything said by Mr. Tidwell that he had recommended or he was going to recommend a civil suit to be brought looking to the recovery of those amounts?

A. No, sir—just a moment—you were talking yesterday about a civil suit, and when I was thinking it over I kind of recollected about a civil suit as you explained to me—you were telling me about a civil suit, the difference between a civil suit and a criminal suit, Mr. Tidwell never made any such remark.

Q. Did he say that he had recommended the bringing of some suit for the recovery of the market value of 62,000 tons out of which it was claimed the Government had been defrauded with respect to the import duty, and that the measure of damages in that case would be twice the market value of 62,000 tons, or about \$900,000? A. No, sir.

Q. What, if anything, was said by him as to the amount of money that would be recovered in case the suit was successful?

A. He did not say. Mr. Tidwell only told me about receiving 25 per cent of what was recovered—of what the Government had been defrauded out of.

Q. Well, he told you 25 per cent, did he not?

A. Yes, sir.

Q. Did you not ask him 25 per cent of what sum?

(Testimony of David G. Powers.)

A. He told me that it would be the amount of coal which the [705—649] Government was defrauded of.

Q. Did he not tell you that the value of the amount of coal as to which the Government was said to have been defrauded out of duty on, was a certain amount?

A. No, sir; he did not tell me the amount or anything like that; he told me I was to receive 25 per cent of the amount the Government was defrauded out of, that is, on duty.

Q. Did he not state to you that it would be 25 per cent of the amount of coal, or the value of the amount of coal as to which it was claimed that the Government had been defrauded out of? A. No, sir.

Q. Do you state that Mr. Tidwell told you that it was 25 per cent of the amount of duty?

A. Of duty, yes, that the Government had been defrauded out of.

Q. You are positive about that, are you?

A. Well, 25 per cent of the amount of coal which the Government had been defrauded out of, yes, sir.

Q. Was anything said about duty in connection with that, or the matter of duty?

A. Just the amount of coal that the Government had been defrauded out of he told me, and he spoke about duty, yes.

Q. He spoke about duty too, did he not?

A. Yes, sir.

Q. What, if anything, was said, with regard to duty?

A. He said I would receive 25 per cent of the

(Testimony of David G. Powers.)

amount of coal that the Government was defrauded out of—that is, the duty, the duty that the Government was defrauded out of, such as on coal, you know, the duty on coal.

Q. Were any figures spoken of, Mr. Powers, as to what in dollars and cents that would come to?

A. No, sir.

Q. Did not Mr. Tidwell state to you that the law was that if [706—650] fraud of an actual, wrongful act could be proven with respect to the nonpayment of duty on dutiable goods, that the Government could recover either the goods themselves, if they were still in the possession of the owner, and impose a fine, or if the goods had been sold or passed out of the possession of the owner, then the Government could recover the reasonable value of the goods, and the reasonable value of the goods once again by way of fine?

A. Mr. Tidwell told me nothing about fines at all. He told me about receiving the percentage of the amount the Government would recover, what was defrauded from the Government.

* * * * *

Q. Mr. Powers, did you never have any curiosity to inquire as to what that would amount to in respect to yourself?

A. Mr. Tidwell, after the books had been figured up, had figured the amount of coal that the Government was defrauded out of.

Q. And then what?

A. And then, I think, if I remember right, I think

(Testimony of David G. Powers.)

he figured that the Government had been defrauded out of about \$28,000 or \$30,000 altogether.

Q. \$28,000 or \$30,000? A. Yes, sir.

Q. Then did he tell you, after figuring that the Government had been defrauded out of \$28,000 or \$30,000, that it would be only 25 per cent of \$28,000 or \$30,000 that you would get?

A. I knew that beforehand. I told you before that the amount I was to get would be 25 per cent of the amount the Government was defrauded out of, not only fines or anything like you were putting to me yesterday, which I did not understand. [707—651]

Q. But after he had figured it up as coming to \$28,000 or \$30,000, was there any conversation between you and him with respect to the matter as to whether that would be the sum out of which the 25 per cent was to be given to you? A. No, sir.

Q. Has there been no conversation then which went to the proposition as to what in dollars and cents this 25 per cent would amount to?

A. No, sir.

Q. Have you ever made any inquiry of him with respect to that?

A. No, sir—with respect to it—I asked him the amount of coal one time they were defrauded of.

Q. When was it you asked him that?

A. That was after Mr. Tidwell had figured up the books.

Q. And other than that there never was anything said between you and him, and other than what you have already testified to with respect to what this 25

(Testimony of David G. Powers.)

per cent would come to?

A. He told me that the 25 per cent would be 25 per cent of the amount which the Government was defrauded out of.

Q. And there was nothing, as I say, so far as dollars and cents are concerned, mentioned between you and him on that? A. No, sir.

* * * * * * * *

Mr. STANLEY MOORE.—Q. Mr. Powers, what did you figure how much your 25 per cent would be?

A. Well, I don't understand that; I figured that it would be about one-quarter of that, which was about \$7,000 perhaps.

Q. It would be, according to your figures, about \$7,000? A. Yes, sir.

Q. Now, Mr. Powers, you understood that was not to be in this suit, did you not—that this suit was to come first and that [708—652] if there was a conviction here then there would be the other suit?

A. I never understood anything about any other suit; all I know is what I just told you, Mr. Moore.

Q. Did you figure that you were to get that particular \$7,000 out of this particular case that we are trying now? A. No, sir.

Q. He told you, did he not, that he was going to have another suit brought in case this was successful?

A. He did not, no, sir.

Q. Through what suit did you think the Government was going to recover \$28,000 or \$30,000?

* * * * * * * *

A. I did not know anything about the suits.

(Testimony of David G. Powers.)

Mr. STANLEY MOORE.—Q. Mr. Powers, was it not stated to you that this case was to be brought first, and if it went off all right, then a civil suit would be brought—I will leave out the word “civil,” but another suit would be brought to recover the value of the coal, or the duties, whichever it was?

A. No, sir.

Q. Did you think you were to get that \$7,000 out of the fines which were to be imposed in this particular case in which you are now testifying?

A. Mr. Moore, you had me muddled yesterday about fines; now, I don't know anything about fines.

Q. Very well, I will put it this way: Did you think that you were to get this \$7,000 from the Government as the result of the *result* in this particular case—was it to come out of this case in which you are now testifying?

A. No, sir, out of the amount of money that was defrauded [709—653] from the Government, and from what they made them give back or pay back.

Q. When were they to be made to give it back, according to your understanding; was it at the end of this case?

A. I never had any understanding with anybody.

Q. When I say “understanding,” I mean according to the way it was in your mind, according to the way you understood it. I will put it this way: when were you to get this \$7,000?

A. I think that they could get the money—well, I didn't really know how they would get it.

Q. Was it at the conclusion of this trial, or rather

(Testimony of David G. Powers.)

after the conclusion of this trial, if it was successful, that you expected to get this money?

A. No, I did not think that. I thought perhaps when they could prove it by the books, that they would recover that money.

Q. The question is, when did you expect to get hold of the \$7,000, that you understood would be coming to you?

A. When the Western Fuel paid the Government what it owed it.

Q. When did you expect that would be in regard to this trial and the end of this trial?

A. I didn't know anything much about trials, about civil suits, as you term it.

Q. Did you think you were to get it pretty shortly after this trial, or that a long time would go by, maybe several years?

A. I didn't know when I would get it.

Q. Didn't you think about that when you heard you were going to get 25 per cent, and when you afterwards heard or figured that it would be about \$7,000, did it not come into your mind, when am I going to get that money?

A. No, I really didn't know how they were going to get it, I [710—654] didn't think of how they were going to get the money back.

Q. Do you mean to be understood as testifying that the thought has never passed through your mind as to when you were going to receive that?

A. No, sir.

Q. You have given no thought to that?

(Testimony of David G. Powers.)

A. No, sir.

Q. You have never given any consideration as to whether it was to come out of this case or whether it was to come out of some other case to follow this case or whether there was to be any other case except this case, as I understand you?

A. I said I figured that after the Government recovered the money I would get it sometime, I did not know when.

Q. I know that, Mr. Powers, but I am talking about cases now; did you ever give any consideration as to whether it would come as the result of this case or whether it would come as the result of some other case?

A. No, sir. I told you before that Mr. Tidwell told me that when the Government recovered what it lost or what they were defrauded out of I would receive a reward.

Q. Was anything said by Mr. Tidwell as to when he expected that would be?

A. No, sir. The only thing he said was, after they had recovered.

Q. You used the word "reward," Mr. Powers; was that the expression that was used also by Mr. Tidwell in speaking of this sum of money or percentage?

A. No, sir; he said I would receive 25 per cent of the amount which the Government was defrauded of.

Q. Then that is your expression or understanding as to what this should be for or should represent, a reward? A. Yes, sir.

Q. Don't you remember me asking you the other

(Testimony of David G. Powers.)

day as to any [711—655] fines or rewards that might come to you from the Government?

A. Yes, sir.

Q. I used the word “rewards” too, did I not—the same word that you used? A. I think so.

Q. And you were asked this question: “Q. Have you ever spoken upon that subject in any way, shape or form, or as to any fines or rewards that might come from the Government”; and you answered “No, sir,” did you not?

A. I understood you then, Mr. Moore, to be talking about fines and things. You got me muddled up.

Q. I then asked you, speaking this way: “I am not limiting it, Mr. Powers, to this particular case”; that is, I referred to the case on trial then, and you understood that, did you not?

A. I did not understand you; I thought you were talking about fines.

Q. I said to you, “I am not limiting it, Mr. Powers, to this particular case now in question, and I want you to understand that.” As I understand you now, you did not understand that I was not limiting the matter to this case; is that correct? A. Yes, sir.

* * * * *

I testified the other day that I went down with Custom Agent John W. Smith to watch the Folsom Street bunkers. I cannot remember now what the date was. I cannot remember whether I testified before that it was January, 1913. We took our station on the south side of Folsom No. 2, out of sight by that wharf, at the end of Harrison Street. We were

(Testimony of David G. Powers.)

on the wharf, right at the bulkhead over by the dock on Harrison Street. That would be the landward end of the dock. We stood behind a [712—656] kind of shed. No one was with me except Mr. Smith. We remained there until a little after 12 o'clock, and then we shifted our position to the other side, that is, to the north side of Folsom No. 2. We stood behind a place where the transport dock used to be. We were on a level with the dock. Whether the electricity is operating in the third rail during the noon hour or not, I do not know. I am speaking of the time 5 minutes to 12. The customs-house man had gone. We could see him leaving the premises from the position which we occupied. He came down the stairs on the opposite side of the bunker. We could not look through the bunkers; we could look beneath them as he came out. Mr. John W. Smith, who was with me, also saw him. I went down to Folsom Street about three times to make such observations during January, 1913. It was always in the daytime. I did not go there in the night-time. On one such occasion we located ourselves on the top of a roof about a block off. It was the roof of a new building they were putting up on East Street. Mr. John W. Smith was with me on that occasion. Mr. Enlow was also with me on one occasion. Our purpose in going down there was to see the working of the cars, to see what they were doing at noon hours, and to see how they lumped the coal. The only train that I saw moved during the noon hour was the one I have mentioned consisting of four cars in connec-

(Testimony of David G. Powers.)

tion with the discharge of the "Americano."

On those occasions when I made observations at Folsom Street I watched the hoppers. I did not see any coal poured out of the hoppers into the bunkers below. We went down there to see if in any way the Government was being defrauded; and the complaint of the pouring of coal out of the hoppers directly into the bunkers would be one thing we were looking out [713—657] for. I do not remember when the "juice" goes out of the third rail. It is true that I have worked down there in the employ of the Western Fuel Company weighing coal. I do not know that it is at twelve o'clock sharp that the electricity goes out of the third rail. I do not know that the company generates its own electricity. I think the electricity was furnished by the city. I think they had switches, and that the city furnished the electricity, but I am not sure of it. I have been around there many times. I have worked for the company many years. Part of my duty included the weighing of coal on the top of those bunkers. I do not know that it is a fact that the Western Fuel Company generates its own electricity, and that the electricity goes out at 12 o'clock sharp when the whistle blows.

The four cars that I have mentioned on the occasion of the discharge of the "Americano" went out to the scales. I do not know where the cargo came from that the "Americano" was discharging. I did not see any clerk there representing the ship. I am not aware that the coal the "Americano" was dis-

(Testimony of David G. Powers.)

charging was not coal that had been mined by this company. I do not know whether it was or not. I do not know where the coal came from. At times the importer is represented during the discharge of coal from the ship, but at other times there is nobody there. I am not sure whether the occasions when there is no checker there are or are not the occasions when the company is discharging its own coal. I cannot say that I have any recollection of any instance when a ship's clerk was not there when coal came from Australia. I am not sure about the clerk not being there on Australian vessels but I know there are many times when the clerk is not there. On this occasion when they brought a car over the scales, they dumped at five minutes to one. The four cars were dumped into the inshore bunkers at that time. They were taken on past the scales, and [714—658] over the scales at about 5 minutes to twelve, and switched back. If they had wanted to put coal in the inshore bunker during the absence of the customs officer, they could have raised the chute and shoveled the coal down in. It would not have been necessary to put it in the cars at all. They could have let it run from the hopper. The cars were reloaded after they had been dumped into the bunkers.

The three or four occasions that I went down to Folsom Street to make observations, once with Mr. Enlow and several times with Mr. J. W. Smith, were at various times. I could not specify their dates as having occurred all in January, 1913, even granting

(Testimony of David G. Powers.)

that January was the month that I observed the "Americano." On the occasion when we were on top of the building, I could not tell what was the name of the vessel that was being discharged. I cannot remember the name of any other vessel that was discharged at any of the times we were down there except the "Americano." The occasions, however, were not so close together that they could all have been during the unloading of one ship. I suppose that two or three ships were unloading at the various times that we were down there. In other words, we watched the unloading of two or three different ships. It takes about four days to unload a vessel. We only went down once during the discharge of a single vessel. It might have been a month or two before the discharge of the "Americano," if that was in January, 1913, that I first went down there. I have no recollection whether the occasion on which I went down there before the discharge of the "Americano" was in December, November or October, 1912. I cannot fix the date. The first occasion when I went down there may have been two or three months before the discharge of the "Americano"; [715—659] I am not sure. It is a fact that at different times over a period of two or three months, whether there were two or three occasions, or more than that, I went down there with those customs agents for the purpose of secret observation of the operations of these bunkers. Outside of the car that I claim to have been moved during the noon hour, during the discharge of the "Americano," I

(Testimony of David G. Powers.)

observed nothing else down there. The car that was then moved was loaded before 12 o'clock. It was actually being loaded when the custom-house weigher left for his lunch. It was loading as he went down stairs. It only takes a few minutes to load a train of cars—about three minutes, I should judge. When the loading of this car was completed, it was brought up to the scales. It was then run on past the scales and remained on the switch until close to one o'clock.

My other visits to Folsom Street of which I have spoken also occurred during the noon hour, or, at any rate, covering the noon hour. We made several visits, some of which were before, and at least one of which was after the discharge of the "Americano,"—I believe it was only one.

I several times went down there to watch the coal-ing from the barges to the vessels, as distinguished from the discharging of the vessels themselves of their imported coal. I do not know how many times, perhaps three or four. This was down at the mail dock. On those occasions I was accompanied sometimes by Mr. Smith, and sometimes by Mr. Enlow; sometimes both of them would accompany me, and sometimes one or the other of them alone. The aggregate of our visits would be three or four.

In addition to the occasion when I watched the "Korea" being coaled from the "Wellington" at night, I also watched the "Korea" being coaled from the "Theobold" in the daytime. I [716—660] have forgotten the number of weights that were taken on the latter occasion. On said latter occasion

(Testimony of David G. Powers.)

the buckets were going up fairly well filled, even when they were not being weighed. They seemed to be taking the weights very well in that case. Both occasions, namely, that when the "Theobold" was operating, and that when the "Wellington" was operating, were connected with the same trip of the "Korea." I also saw the "Wellington" discharging by day into the "Korea," and in connection with this same trip of the "Korea." On that occasion the tubs were going up very badly. The buckets were only three-quarter filled, or a little over. I was on that occasion standing on the deck of the ship. It was in the night-time. Mr. John W. Smith was with me. They were weighing four tubs at a time, instead of one tub. They were weighing a round of tubs about every hour and a half or so. I did not keep count as to how often they weighed. I went down there to see the way the tubs were going up. In answer to the question, "Didn't that include seeing how frequently they would take a weight?" I would answer that Mr. Enlow, or rather Mr. Smith, kept track of that. I do not believe they took four rounds out of sixty. I think the tubs were going up at the rate of about 60 an hour. They weighed the tubs four in succession. They would weigh about one in 90. My best judgment is that about an hour and a half elapsed between the weights. The state of the ship's bunker has something to do with the rate at which the tubs go up. I don't remember which bunker of the "Korea" they were filling at that time. She has about 14 or 15 holes into which

(Testimony of David G. Powers.)

they dump coal, I guess. There are more than ten holes on each side. They were on that occasion filling the "Korea" up aft, and the buckets were little more than three-quarters full. [717—661]

We also went down there once in the night-time to see the "Korea" coaled by the "Wellington." I do not know the name of the custom-house weigher who was present on that occasion when the tubs were going up three-quarters full. There must have been more than 25 regularly employed custom-house weighers. I knew many of these weighers by name, pretty nearly all of them, when I was in the service of the Western Fuel Company. I don't know whether the weigher down there that night was one of the men that I know or not. The custom-house weighers would be transferred around from job to job. I came in contact with most all of them when I was working for the Western Fuel Company. I could get a good view of the custom-house weigher who was there that night, but I have forgotten who it was. I do not remember the name of the custom-house weigher who was on the "Theobald" on the day she was discharging into the "Korea" either. The tubs were going up, as I have said, very well. They were taking the weights pretty well, that is to say, pretty often,—I should say about one tub an hour, or less than an hour. At that time the buckets were going up about 60 to the hour. The "Theobald" is a fast barge. She has a record of 100 buckets an hour. As I said before, I went down there once at night when the "Wellington" was dis-

(Testimony of David G. Powers.)

charging into the "Korea." This was in addition to the occasion when I saw the "Wellington" discharging into the "Korea" by daytime, and to which I have already testified. These three occasions, during the discharge of the "Wellington" into the "Korea,"—once by night and once by day,—and the discharge of the "Theobald" into the "Korea" by day, are the only occasions when I went down there to the Pacific mail dock with Mr. Smith or Mr. Enlow, or either or both of them. Those visits all occurred within the space of a week or so. I think it was in December, 1912. At any rate, it was while the "Korea" was [718—662] there, of course.

Mr. Rosenfeld owned the Mission Street dock when the Western Fuel Company bought it. The Rosenfelds had the contract for coaling the ships before the Western Fuel Company. I have forgotten what changes were made on the docks by the Western Fuel Company during the time of their occupancy, but I have a slight recollection that there used to be a cable there. I think there was a conversion from cable into electricity as the motive power for the cars. Four cars in a train would run over those bunkers in the time of the Rosenfelds, I think. I was up there often. At any rate, the Western Fuel Company used to operate four cars to a train. I don't remember the Western Fuel Company giving up the bunkers at all. I only remember their being dismantled. The Western Fuel Company had the bunkers at the time I left it, which was in December, 1911. It is my recollection that from December,

(Testimony of David G. Powers.)

1911, back to 1902, and even after they had changed to electricity, they operated four cars there together. I do not remember their operating two cars. I do not remember any other change on the bunkers on Mission Street made by the Western Fuel Company other than that I have mentioned. Now that you remind me, however, I think I recall their enlarging the bunkers—some sort of an extension. More pockets were put in. I don't remember any change in the location of the scales-house. I often used to go up there to talk with Eddie Mayer. Now that you remind me, I kind of think that the scales-house was brought from another part of the bunkers and put on the same level with the track. I am not sure that a new scales-house was built. The scales-house was between the inshore and the offshore bunkers, but toward the back end—not right [719—663] at the end of the wharf, however. I forget whether the wharf was divided into inshore bunkers and offshore bunkers. The scales-house was a plain scales-house. I think there were windows in it. I am not sure. however. I do not like to testify unless I feel pretty sure of what I am testifying to. That is where I used to talk and chat with Eddie Mayer so often, right there in the scales-house. I believe a man could look out of the window in the scales-house, but he could not see very well on account of the dust further than the first hopper. The man in the scales-house was down on the level of the track. The floor of the first hopper would be above the level of the track to the extent of about eight or nine feet.

(Testimony of David G. Powers.)

Q. Isn't it a fact that the man could look back on the wharf clear to the end, and see the coal coming out of the bottoms of the hoppers into the cars, and see the cars, see the tracks, see the buckets coming up from the side of the ship?

A. I don't believe so.

Q. What was there to prevent him?

A. You could not see the side of the ship on account of the hoppers.

Q. Then we will leave out the side of the ship; but, after the coal came into these hoppers, and was being discharged there, he could see that, couldn't he?

A. To about the first hopper; it was hard to see when that dust was flying.

Q. If the floor of the hopper was eight feet above the level of the track, what was there to prevent his seeing along that space there, and the scales-house was on the same level as the track?

A. The dust flying, and everything.

Q. Dust? A. Yes. [720—664]

Q. Outside of the atmospheric conditions there, due to the dust lingering in the atmosphere, there was nothing to prevent his view, was there?

A. Yes, the hoppers were in such a way that one was in back of the other, and it was hard to see past one.

Q. But this scales-house, as I understand it, that we are talking about, was on the level of the track; is that right? A. Yes.

Q. And that is the track that the coal cars came over? A. Yes, about the level.

(Testimony of David G. Powers.)

Q. Do you have to look past one hopper, or try to look through one hopper, if the floor of that hopper is eight feet above the level of the track, and you are standing on the floor of the scale-house, and the scale-house is on the same level as the track?

A. You can't see through a car, when they are putting coal into it.

Q. Then you mean outside of the accumulation of dust in the atmosphere, there might be a train of cars that intervened between you, an additional train of cars that was back at some point further inshore along the bunkers; is that what you have reference to?

A. There might be one train is loading in this bunker and the dust is flying so you cannot see it.

Q. Aside from the conditions of operation due to the presence of two trains loading at the same time, one further inshore than the other, and the flying of dust, was there anything else to obstruct your view?

A. Not that I remember of.

Q. Not that you remember of?

A. No. [721—665]

Q. Is there a considerable degree of dust flying down there during the unloading of coal?

A. There is bound to be more or less dust of different coals, different cargoes of coals.

Q. Is it in the atmosphere to such an extent as to interfere very materially with a man's vision, that is, his eyesight?

A. Yes, that is, you can't see through dust.

Q. But I mean when a vessel is discharging, the

(Testimony of David G. Powers.)

dust is so that it bothers a man to look? A. Yes.

I do not remember and have no recollection that the scales rods were boxed in at Mission Street bunkers after the wharf was extended, or that such extension was made just shortly after the Western Fuel Company came into existence; nor do I recall how long it was after the Fuel Company came into existence that the wharf was extended.

Q. Now, who was the weigher that was present at any time that you claim to have seen Mr. Mayer with his foot upon the rod of those Mission Street scales?

A. I don't remember, but I do know of one weigher that used to warn him to sit back from the scales all the time.

Q. Were you present at the time that he gave him that warning? A. I believe I was, yes.

Q. Will you state the name of any weigher whom you saw present there at a time when you say you saw Mr. Mayer with his foot upon the rod?

A. Yes, Mr. Freund;—not upon the rod, but I have heard him tell him to keep away from the rod, to step back.

Q. I am asking you now, Mr. Powers, to state the name of any [722—666] weigher whom you ever saw present there at a time when you say Mr. Mayer had his foot upon the rod. A. I don't remember.

Q. How many years ago was this?

A. It was many times during the time that I have been around there.

Q. How many years ago would the last occasion have been?

(Testimony of David G. Powers.)

A. I would not say about that, I forget.

Q. Can you remember the name of any ship that was discharging in connection with which that occurred?

A. I believe, or think, it was the "Dumbarden."

Q. You think it was the "Dumbarden"?

A. Yes.

Q. Well, that was the ship that ran so many tons short, was it not? A. That is my belief, yes.

Q. Don't you know that Mr. Mayer was not even the weigher upon that occasion?

A. No, I believe he was the weigher on that occasion.

Q. Were you present on that occasion while that ship was discharging at the top of these bunkers?

A. I believe I was.

Q. Have you any recollection that in point of fact you were present during the discharge of that ship?

A. I believe I was; I think so; in my mind, I believe I was.

Q. In your mind you think you were? A. Yes.

Q. Are you positive that Mr. Mayer was the weigher who officiated upon the discharge of that particular vessel? A. Yes, I believe he was.

Q. Now, can you name—that was back in 1905—

A. Yes, before the earthquake. [723—667]

Q. Now, can you name any other ship?

A. No, I don't remember.

Q. Well, the ship's clerks are present on those occasions, too, are they not?

(Testimony of David G. Powers.)

A. On some occasions.

Q. Are they not generally present?

A. There are times that I have not seen any clerks up there.

Q. Well, then, in the great majority of instances?

A. At times, yes.

Q. Well, was there any ship's clerk present on any of these occasions when you claim you saw Mr. Mayer with his foot upon the scale-beam?

A. I don't remember of the clerk being present.

Q. You don't remember? A. The ship's clerk.

Q. Now, you have weighed on these scales, yourself, have you not, and other scales? A. Yes.

Q. Well, now, do you know it to be a fact that if there is any extraneous pressure or pulling on a beam of that kind, that it makes the scale extremely wabby and it becomes at once visible, that motion of the beam?

A. I only heard just what Mayer did to it.

Q. Well, do you know, yourself, from your own observation as a weigher, whether or not that is the case? A. I never tried it, no.

Q. Then you don't know as to whether or not, if there is any pulling on the scales, one side or the other, or on the beam, that it makes a wobbling and uncertain motion? A. No.

Q. Can you give the names of the ships, or any of the ships, that you claim were weighed by you?

A. No, I don't remember them.

Q. Well, in all those years during which you at intervals were [724—668] weighing ships on these

(Testimony of David G. Powers.)

bunkers, can't you furnish us with the name of one that was weighed out by you? A. No.

Referring to the visit that I testified to the other day when Mr. John W. Smith and I watched the coaling of the steamship "Korea" from the barge "Wellington," I would say that our station on the captain's bridge of the "Korea" was about 20 or 30 feet from the bunkers of the ship. The coal was then being discharged into the forward holds. We might have been a little higher, or perhaps on a level with the point at which the buckets tripped. It is my recollection that the captain's bridge would be a matter of 15 or 20 feet above the place where the buckets tripped. I may have had to look down on the buckets. I have testified that it would be very dark at times when the barges were discharging, and that there were not sufficient lights put up for the men to see the quantity of material that was in these buckets. Nevertheless, looking down as I was on the buckets, I could tell by the light on the bumper whether the buckets were full or not. The light was right over the buckets, that is over the bumper. It was perhaps a few feet above the buckets, and I was perhaps a few feet higher still, or on the level. I was about 20 feet away from the buckets when they tipped. I may have testified the other day that it was a distance of 30 or 40 feet, but I do not believe so. In point of fact, I could see how much coal was in the buckets.

One of the men that Mr. Tidwell sent down to the Folsom Street bunkers to see if anything was wrong

(Testimony of David G. Powers.)

in connection with the operations of the Western Fuel Company there was Mr. Murray, a customs weigher. There were only two such men that I know of. [725—669] There might have been more. I made a statement in the "Bulletin" of August 1st that Mr. Tidwell had sent down perhaps two or three men to look out to see whether the Government was being defrauded at Folsom Street. I don't remember the time when he sent them down there.

Mr. MOORE.—Q. Who first introduced you to Mr. Tidwell, Mr. Powers?

A. I went down there—over the telephone, I was telephoning—I was sent down by Mr. Masters. I was not introduced to him by Mr. Masters.

Q. By what Mr. Masters?

A. Mr. Stewart Masters.

Q. What was Mr. Stewart Masters' business at that time, or where was he employed?

A. On the "Bulletin."

Q. At the "Bulletin"? A. Yes.

Q. And that was on the occasion in August, 1912, when you first became acquainted with Mr. Tidwell?

A. I had become acquainted with Mr. Tidwell after that. I was sent down there by Mr. Masters.

Q. How long after you were sent down there by Mr. Masters, or through the telephone message, was it before you met Mr. Tidwell, or became acquainted with him? A. I went right down.

Q. Now, did Mr. Masters or Mr. Gleason go down with you? A. No.

Q. Was that the time that you talked to Mr. Tid-

(Testimony of David G. Powers.)

well, he said that he wanted time to think it over?

A. I talked to Mr. Tidwell, yes.

Q. Was that the occasion when Mr. Tidwell said to you that he wanted time to think it over?

A. Yes. [726—670]

I don't know when it was Mr. Tidwell first spoke to me about this matter of a reward. I don't know whether he brought up the subject right at our very first meeting or not. I do believe that we had a second conversation on rewards, however, but I do not know when that took place.

Mr. Tidwell did not speak to me regarding my testimony on fines and rewards after I came down from the witness-stand here last Friday. I might have spoken to him here in the courtroom, but he did not tell me that I was mistaken in the testimony I had given denying a conversation between himself and myself on the subject of rewards. He has never told me in all the time between last Friday and the present moment that I was thus mistaken. I did tell Mr. Tidwell this morning, just as I had told Mr. Roche, that I had made a mistake in my testimony, but that was on my own initiative. Mr. Tidwell just told me to go ahead and see Mr. Roche, and Mr. Roche told me to tell the Judge.

I don't remember making any statement to Mr. Masters of the "Bulletin" regarding any expectation that I might have had in regard to receiving a reward in this case. Neither do I remember making any such statement to Mr. Gleason of the "Bulletin." I was acquainted with Mr. Gleason on the day that

(Testimony of David G. Powers.)

Mr. Masters telephoned down to Mr. Tidwell's office. I also mentioned here the other day the name of another man on the "Bulletin," Mr. Leo Mayer. He works on the "Bulletin." I do not know what position he has.

When the barges go to the bunkers to be loaded two men ordinarily accompany them. They are barge-men or barge-tenders. One belongs to that particular barge, and the other is drafted from another barge, so that there will be two men when the barge is [727—671] in motion, one to ride on the bow and one on the stern. Those are the only men who ordinarily accompany a barge when she goes over from the mail dock or out in the stream after coaling a vessel. While the barge is being coaled herself, one man, who regularly attends her, stays with her, and the other goes away.

There are about 16 stevedores ordinarily in the employ of the Western Fuel Company to work in the holds of the barges. Two different barges usually work at the same time. There are eight shovelers in each hold and a hatch-tender and an engineer. Sometimes there is a customs inspector seated on the barge when the barge is coaling a vessel. He looks out for opium and matters of that kind, but the inspectors do not always remain on the barges. They walk along the decks most of the time. There is one inspector on each side of the ship. At times the inspector goes down into the barge.

Q. Now, who are these custom-house weighers that you claim found it too dirty to remain around

(Testimony of David G. Powers.)

where the coal was going up and would be in the cabin and other places?

A. I should judge most all of them.

Q. Can you name some of them, Mr. Powers, that you have seen doing that?

A. I say many of them and I don't want to recall and remember one, and pick out exactly one man that did it.

Q. You needn't pick out one man; just tell us all that you have ever seen doing that?

A. I cannot tell all that I have seen. I say, as a rule, it was done all the time.

Q. Can you mention now any particular custom-house weigher that [728—672] you recall having seen doing that? A. Mostly all of them.

Q. Can you name them, Mr. Powers? A. Yes.

Q. Proceed and do so, please. A. Mr. Hoburg.

Q. Yes? A. And many others.

Q. Is he the only man that you can name?

A. No; if I went ahead and named them, I would name them all, if I could remember all their names.

Q. Name them.

A. I don't remember all their names.

Q. Well, does that apply to every custom-house weigher, the answer that you have made with respect to Mr. Hoburg, does that apply to every custom-house weigher that you have seen down there?

A. It applies to the majority or all of them, I guess.

Q. Now, I am just going to ask you the question once again that I asked you: Is there any other one

(Testimony of David G. Powers.)

of them that you can name outside of him?

A. I said there was all of them, or pretty near all of them. Of course, there are exceptions to the rule.

Q. Don't you know the names of the custom-house weighers in addition to Mr. Hoburg?

A. I have forgotten the names of all of them.

Q. Do you recollect the names of any of them aside from him whom you have seen doing that thing?

A. I forget their names.

The stevedores or shovelers in the barges sometimes get \$6 a day, and sometimes \$5 a day, being the scale of the Stevedore's Union. Just after the earthquake of 1906 they [729—673] paid a little more; they paid about a dollar a day more than the scale for about a year or so, when they dropped back to the regular Union scale. The overtime paid was a dollar an hour. The barge-tenders used to get \$65 a month, and now they get either \$65 or \$70 a month.

Q. At the time that you understood, Mr. Powers, that your position was not going to continue, did you not immediately charge with corruption all of the other Special Agents, or at least Mr. Tidwell and Mr. Enlow and Mr. Smith, and say that some of them had had conversations respecting bribery with you?

A. No, I never remember a time when I received such a communication as you are talking about.

Q. Well, did you say that at any time?

A. I made statements, yes, sir.

Q. And that was at or shortly after the time that Mr. Tidwell had told you that these appointments

(Testimony of David G. Powers.)

as customs agents could not last, was it not?

A. I don't remember that time, no.

Q. You don't remember which time?

A. The time that Mr. Tidwell had told me that, the exact time.

Q. The time that he told you about it was within the life of the last 90-day appointment as special agent, which terminated, as I understand you, on or about August 1st, 1913, was it not? A. Yes, sir.

Q. Now, did you not, among other things say that the special agents were in a plot to fabricate evidence against you looking toward your indictment, your own indictment?

A. I said it looked that way to me, yes, sir.

Q. It looked that way to you? A. Yes, sir.

Q. And you claimed that these special agents had been trying [730—674] to get shovelers to say that you had told them to fill full the buckets at such times as they should be weighed with the soft and fine coal as you have described here, but that at other times they were to run them light; did you not?

A. Yes, sir—

Mr. ROCHE.—Just one moment. That question we object to, if your Honor please, as immaterial and not proper cross-examination.

Mr. STANLEY MOORE.—Your Honor, if anything, it only goes to test the credibility of the witness. We can show that this witness has testified to lots of conversations with the defendants in this case, according to his claim, which never occurred; and we will show also that he claimed the same thing,

(Testimony of David G. Powers.)

and claimed it promptly as soon as he saw that his position was not going to last with the Government, he hurled all kinds of charges of corruption and bribery and conspiracy against the special agents, Mr. Tidwell and Mr. Enlow and Mr. Smith. It simply goes to the question of the credibility and the veracity of this witness and the amount of credence that can be placed on his testimony.

The COURT.—I know, but that opens up too many collateral questions. We would have to try them to find out if he was telling the truth. See what a field that would lead us into. The objection is sustained.

Mr. STANLEY MOORE.—Your Honor, I don't think it would take very much time.

The COURT.—That is not the question as to how long it would take in this particular instance, it is the question of how long it might take in any instance. The objection is sustained. [731—675]

Mr. STANLEY MOORE.—We note an exception.

As a matter of fact, I did not tell the shovelers to heap the buckets up full when they were to be weighed, and to put in the soft and fine coal, and at other times to run them light. I never during all the times or time that I was working for the Western Fuel Company gave any such instruction.

Cross-examination by Mr. McCUTCHEN.

I was not on the captain's bridge on both occasions when I observed the coaling of the "Korea" by the barge "Wellington" at the Pacific Mail dock. When I was not on the bridge I was on the deck of the

(Testimony of David G. Powers.)

ship. Canvas was stretched there to protect the ship from coal dust. In answer to the question whether the canvas shielded the barge from the ship at all, I would say it did. It was all over the decks. Even with the canvas stretched I could see in the hold of the barge at the end. I suppose we were 30 feet away from the bottom of the hold of the barge. I could see the tubs in the bottom of the hold from the deck of the ship. We could see around the other end of the canvas. We were only a few feet away from the opening or hole which led into the bottom of the barge. We could see the tubs down there. The tubs when in the bottom of the hold were 30 or 35 feet away from us. The time that would elapse between the moment when the tubs left the hold of the barge, and when they hit the bumper which tipped them over would vary according to the ship and the barge. It would be perhaps half a minute on a slow barge running 60 tubs to the hour. When Mr. Smith and I were on the captain's bridge of the liner we could not see the tubs in the bottom of the hold; but you could see them coming up, though not till the light flashed on them at the [732—676] bumper. The tubs went up at night about 30 tons to the hour. The hoist works just as rapidly at night as in the daytime ordinarily. The tub goes up to the bumper just as rapidly in the night as in the day. You could see the tub when it hit the bumper when the light flashed on it. We could see the tubs and what was in them when they were overflowing at the time the weights were being taken; but you could not see exactly the

(Testimony of David G. Powers.)

contents of the tubs otherwise until they got right up to the bumper and the electric light. You could see the tub come up after it reached the deck where the hatch-tender sits, and after it hit the bumper, and it was in one view all that time after it reached above where the hatch-tender sat. It would travel about 15 feet from the deck to the bumper. I could see what was going on from the hatch when I was hatch-tender.

My father did not have the trimming contract from the Pacific Mail during the time that I was acting as checker under employment of Mr. Chisholm of the Pacific Mail, nor during any of that time. He first got the contract about a year before I got into trouble.

Cross-examination by Mr. STANLEY MOORE.

I have been doing some painting lately. I have been painting my father's flats. I painted three houses for him and some of the inside work, etc.

Redirect Examination by Mr. ROCHE.

I have been under subpoena by the Government requiring my presence here as a witness in this case for many months. I left the employ of the Government about five months ago, namely, in August, 1913. I was then under subpoena in this case, and I have been under subpoena requiring my presence here ever [733—677] since. I have made efforts to gain employment between August, 1913, and the present time. I went to several different people and asked for positions. I honestly endeavored to get employment.

(Testimony of David G. Powers.)

I recall testifying on cross-examination by Mr. Moore to the scale of wages paid from time to time to the various stevedores on barges and ships. I don't know who in fact employed and discharged these stevedores. It is very seldom you ever see a discharge there. The crews would pass from one hatch-tender to another. They worked in together. These shovelers or stevedores are paid by the hour. It is a steady gang. Sometimes, however, it happens that the Western Fuel Company does not have work enough to keep all the men going. It would happen, therefore, occasionally that some of them would be laid off.

Q. Who had the right to select the particular men who would be laid off on those occasions when there would not be sufficient work to keep all of the men in the employ of the Western Fuel Company?

A. The hatch-tender.

Q. And was he directed, or rather, would he personally select these men, or would he select them under the direction of the defendant Mills, or some other official of the Western Fuel Company?

Mr. McCUTCHEN.—One moment. I object to the question as leading and suggestive. The witness can it seems to me be asked for the fact.

The COURT.—The objection is overruled.

Mr. STANLEY MOORE.—We note an exception.

A. It was directly from Mr. Mills; that is, it came down from Mr. Mills to the assistant. [734—678]

* * * * *

Mr. ROCHE.—Q. Is there any record kept—I will

(Testimony of David G. Powers.)

withdraw that question. Who kept tab, if anyone, upon the men who filled these tubs with coal, so far as the barges are concerned?

A. Who kept tab on them?

Q. Yes; who watched their operation?

A. Mr. Mills and the hatch-tender would watch it.

* * * * *

Q. You say that during the time you were acting as assistant to the defendant Mills occasions arose when it became practical or necessary to lay off some of the men because of the fact that there was not sufficient work on hand to keep them all employed steadily? A. Yes, sir.

Q. That is correct, is it? A. Yes, sir.

Q. Do you know how the particular individual would be selected or why he would be selected to be temporarily relieved instead of some other employee being so selected?

A. No, I don't know any special reason. The orders came from Mr. Mills when the work was getting slack or anything to always lay off two men out of every eight.

Q. And by whom would the men be laid off, by the hatch-tender or by you?

A. By the hatch-tender.

Q. Did it sometimes occur during the time you were acting as hatch-tender and also during the time you were acting as assistant to the defendant Mills that men were permanently laid off because of any vacancy?

Mr. STANLEY MOORE.—That is objected to as

(Testimony of David G. Powers.)

leading and suggestive, and not a proper way to examine the witness.

The COURT.—That does not seem to be very objectionable; the objection is overruled. [735—679]

Mr. BLACK.—We take an exception.

A. No.

Mr. ROCHE.—Q. You say that no man was discharged for that reason?

A. No, sir; they were not discharged for that reason on the two steady barges, but at times they were discharged on the slow barges, you know, extra barges.

Q. For what reason, do you know?

A. Because they could not do their work.

Q. That is just what I am trying to get at; you say they could not do their work; in what respect could they not do their work?

A. Well, they could not get out the amount of coal that was supposed to have been gotten out.

Q. How frequently, if you recall, would a man be discharged from off of these barges for that reason?

Mr. STANLEY MOORE.—That is objected to as assuming that it was the discharge of an individual; he has not said whether it would be a gang or an individual, speaking now of the cases other than the steady barges.

The COURT.—The objection is overruled.

A. Can I have the question repeated, please? (Question read.)

Mr. ROCHE.—(Continuing.) Q. That is, because he was not able to do his work, not able to fill the

(Testimony of David G. Powers.)

loads sufficiently; how often did that occur?

A. Oh, at different times that I was there.

Q. And do you know that of your own knowledge, that men were discharged for that reason?

A. Yes, sir.

Q. You recall, of course, as you have testified upon that subject, the day upon which you went down for the first time and had a conference with Mr. Tidwell, the special agent? [736—680] A. Yes, sir.

Q. And, as I understand your testimony, you went there at the request of—I will withdraw that question. At whose request did you go to Mr. Tidwell's office? A. At the request of Mr. Masters.

Q. Mr. Masters was at that time, as you have testified, connected with the "Bulletin," and he is at the present time a reporter on the "Examiner"; is that correct? A. Yes, sir.

Q. And the Mr. Masters to whom you now refer is the gentleman sitting in this courtroom reporting for the "Examiner"? A. Yes, sir.

Q. Is it or is it not true that before you ever saw Mr. Tidwell and before you ever had any conference of any kind with Mr. Tidwell you first disclosed to Mr. Masters and to Mr. Gleason and to Mr. Leo Mayer the larger part of the facts and circumstances connected with this case and the smuggling case to which you have referred upon cross-examination?

A. Yes, sir.

Q. And that was, as I understand your testimony, before you saw Mr. Tidwell at all? A. Yes, sir.

Q. You have said upon cross-examination that Mr.

(Testimony of David G. Powers.)

Tidwell did speak with you concerning your receiving a proportion of the amount of money, being the duties on the value of the coal out of which the United States had been defrauded, and that in your mind, if you were paid that reward, you would get in the neighborhood of \$7,000, or one-quarter of some \$28,000? A. Yes, sir.

Q. Before Mr. Tidwell touched upon that subject either directly or indirectly, had you narrated to him all of the circumstances [737—681] and facts within your knowledge relating to this particular controversy?

* * * * * * *

A. Yes, sir.

Mr. ROCHE.—Q. Did you at the time you made that statement to Mr. Tidwell, and before any question of reward or compensation in any form was discussed between you and him, state to Mr. Tidwell the reason why you were making those disclosures to him, and if so, I want you to state to the jury what, if anything, you said to Mr. Tidwell upon that subject.

* * * * * * *

A. At the time I went to Mr. Tidwell's I went there with my mind made up that I was going to be arrested, or I mean, that I was going to be brought before the Grand Jury because of a letter taken out of the Alameda county jail in another person's shoe.

Mr. ROCHE.—Q. Who was the particular individual that was in the county jail at that time and by whom was this letter sent out?

(Testimony of David G. Powers.)

A. Emil Fiedler.

Q. And he was doing what?

A. He was awaiting trial.

Q. In whose employ was Fiedler at the time he was arrested? A. The Western Fuel Company.

Q. In what capacity? A. As barge-tender.

Q. Now, you say that while in the county jail under arrest he sent out a letter addressed to whom?

A. To me.

Q. Did you receive the letter? A. No, sir.

Q. Do you know who did receive the letter or who did obtain the letter? [738—682]

A. Yes, sir; Mr. Bull received it and turned it over to the federal authorities.

Q. Before you had a conference with Mr. Masters, or with Mr. Gleason, or with Mr. Meyer, had you been apprised by any of the Government officials of the existence of the letter and of the fact that the letter had been intercepted by some of the Alameda authorities, or the federal authorities? A. Yes, sir.

Q. By whom? A. Mr. Head.

Q. And he was employed in what capacity, and by whom?

A. As a lieutenant of the customs watch, by the United States Government.

Q. Before that date had you been brought before the United States Attorney for the purpose of being questioned regarding the subject matter of that communication? A. No, sir.

Q. You say that you understood that you were to be hailed before the Grand Jury; who gave you that

(Testimony of David G. Powers.)

information? A. Mr. Head.

Q. And what did he say in that regard?

Mr. McCUTCHEN.—One moment; if your Honor please—

The COURT.—I thought you were leading up to a conversation, Mr. Roche, between this witness and Mr. Tidwell?

Mr. ROCHE.—I intend to lead up to that, if your Honor please. I want to show the impelling purpose which required him or obligated him to go to Mr. Tidwell's office.

The COURT.—He went down there he says on the suggestion of Mr. Masters.

Mr. ROCHE.—Q. Now, up to that time, that is, up to the time that you were given this information by Mr. Head, had you [739—683] given to the Government officials any information of any kind against Fiedler or against Donaldson or against anyone else? A. No, sir.

Q. When you went down to Mr. Tidwell's office you say you believed you were going to be brought before the Grand Jury?

A. Yes, sir, when I went—Mr. Masters thought I was going to be brought before them too when I went down there.

Q. You say Mr. Masters told you that too?

A. No; I talked to Mr. Masters about it.

Q. Did you also talk to Mr. Tidwell upon that subject?

A. I don't remember; I believe I did; I don't remember.

(Testimony of David G. Powers.)

Q. And was it after you had been notified that you were going to be hailed before the Grand Jury, and after you had been advised by Masters and Gleason and Meyer to go down and see Mr. Tidwell, that you went down there? A. Yes, sir.

Q. Now, will you just state, as far as you can recall the conversation, what took place between yourself and Mr. Tidwell upon that occasion, excepting those portions of it to which you have already testified?

A. Mr. Tidwell told me at that time that he would look it up, if I remember right, and think it over, and I should come down again. I don't remember the exact facts there.

Q. How long were you engaged in conversation with him at that time?

A. About half an hour or so, I guess.

Q. At the customs-house? A. Yes, sir.

Q. And you have testified that some short while after that you were employed as a customs agent; is that correct? A. Yes, sir. [740—684]

Q. Under what circumstances were you employed by Mr. Tidwell as customs agent?

A. I was employed at \$3.00 a day for 90 days.

* * * * * * *

Q. I want you to go on and state, as nearly as you can recall it, the conversation you had with Mr. Tidwell as the result of which he appointed you customs agent.

A. I spoke about the opium smuggling, different smuggling, and also about the Western Fuel Company.

(Testimony of David G. Powers.)

Q. I don't care about that part of the conversation relating to the Western Fuel Company or the opium smuggling, but I want to find out from you how did you happen to be employed as special agent; did you ask him for employment or did he suggest to you employment; that is what I am trying to get at?

A. No, sir; Mr. Masters sent me down there and I went down there and Mr. Tidwell talked to me about it, and I talked to Mr. Tidwell about it, and he told me to wait awhile about it, or he would let me know about it soon, or something to that effect.

Q. Did you ask him for employment or did he suggest to you the employment?

A. Mr. Tidwell suggested it.

Q. Did he ask you at that time whether you were employed?

A. I don't remember whether he did or not.

Q. Did you say anything to him on that subject, as to whether you were employed or had been able to obtain employment?

A. Oh, I said I tried to get work several times, dozens of times, but I could not get work.

Q. Did you at that time say anything to him as to what you were willing to do if he employed you?
[741—685]

A. I told him I would do anything; I would be willing to do anything.

Q. Now, upon that same subject, and as leading up to your employment by Mr. Tidwell, upon what date were you released from the county jail?

(Testimony of David G. Powers.)

A. On the 2d of July.

Q. That is, you served five months out of a six months' sentence; is that correct? A. Yes, sir.

Q. You were allowed 30 days full credits for good behavior; that is correct, is it? A. Yes, sir.

Q. Now, I would like to have you tell the jury just what efforts you made between the date on which you left the county jail at Alameda and when you first broached this subject to Mr. Masters, Mr. Gleason and Mr. Meyer?

Mr. McCUTCHEN.—What efforts to do what?

Mr. ROCHE.—What efforts, if any, he made for the purpose of obtaining employment, and particularly from those—I will put it this way: what effort did you make for the purpose of obtaining employment?

A. I went many mornings, sometimes at six in the morning, down to the Mail Dock looking for work. I told Donaldson I would do anything if he would give me a chance, and they kept telling me they would but they would not do it.

Q. How often did you go down there at six o'clock in the morning for the purpose of getting work?

A. Many mornings.

Q. And how did you go down there upon many of those mornings? A. I used to walk. [742—686]

* * * * *

I have forgotten the name of the barge-tender against whom I made a complaint in connection with the throwing of opium upon that barge, namely, the "Melrose." It was about a month before I got into

(Testimony of David G. Powers.)

trouble on December 13th, 1911, that I made this complaint. Just before I learned about the trouble leading to this complaint, I was aboard the barge "Nanaimo." She was on the north side of Pier 42. The "Melrose" was on the south side of Pier 42 alongside either the "Persia" or the "Asia." I first learned that they had opium on the "Melrose" from my father, and I was on the "Nanaimo" when I received that information. Up to that time I had no knowledge of any kind that a transaction of that kind was about to take place. I received this information from my father. I went right over to the barge "Melrose" and aboard her. There I met the defendant, Edward J. Smith. He also told me about the opium and about seeing it thrown overboard from ship to barge. I went right down to the cabin, and I found the bargeman just coming out of a toilet room back of the cabin; and there was the opium, so I told him to get the opium off the barge, and that I was going to report it, that I would not allow it on the barge. I do not know whether he threw it off or not. I went and told Mr. Mills the next morning, and Mr. Mills told me to discharge the man. I mentioned the name of this individual to Mr. Mills; that is, of the barge-tender who had obtained the opium. That was the first time to my knowledge that any thing of the kind had ever taken place on any one of those barges. The occasion when I got into trouble on the 13th of December, 1911, was the first occasion that I ever had any connection myself with an attempt to smuggle opium.

(Testimony of David G. Powers.)

The partnership of my father and the defendant Mills had not been a continuous affair for a period of twenty years. They [743—687] were in partnership on the day on which I got into trouble, and had been in partnership on that particular job for about a year theretofore. The partnership was of a sort that rose up at different times on special jobs and contracts. I don't want to be understood to say that my father and Mr. Mills were partners continuously for a period of twenty years prior to December, 1911. I cannot state how much of the time between my original employment with the defendant Mills and the 13th of December, 1911, Mills and my father were partners. My father was a partner of the defendant Mills at the time I was first employed. They were not at that time trimming the coal of the Pacific Mail Steamship Company. My father had worked for that company, however, in charge of the trimming, for some thirty or forty years. He was on salary at that time. That was before I was employed by Mills. My father was never employed on salary by the Pacific Mail Steamship Company after the date that I became employed by the defendant Mills and my father in 1902. He never worked as a salaried employee of said company after that. Mr. Mills and my father, when they worked for the Pacific Mail Steamship Company, got so much per ton under contract. When I said that my father was a salaried employee of the Pacific Mail Steamship Company, I meant that he was paid by the day. The first time, then, that my father and the defendant

(Testimony of David G. Powers.)

Mills obtained a contract for the trimming of the coal of the Pacific Mail Steamship Company after my employment with them in 1902, was about a year before December, 1911. On a number of occasions during that period my father and the defendants Mills were not partners. It was only when certain contracts were obtained.

When I said upon cross-examination that I was employed [744—688] by the Pacific Mail Steamship Company either thirty or sixty days, I meant to testify that if all the days upon which I worked for that company were put together, they would aggregate thirty or sixty days. I cannot specify the period within which those days would fall. It was around 1909 and 1910, but I am not sure.

I do not recall whether, prior to the visits that were made by me, with Customs Inspector Smith, to the Folsom Street bunkers, to which I have testified, publications appeared in the newspapers indicating that an investigation was being made relative to these alleged coal frauds. Upon the occasion of one of those visits Mr. Smith and myself located ourselves upon the top of a building on the opposite side of the street. That building was about a block and a half away from the Folsom Street dock, and you could not see from our station on it the name of the particular boat that was being discharged at the time.

Cross-examination by Mr. MOORE.

My father was employed by the Pacific Mail Steamship Company for, I should judge, about forty years at various times; that is to say, at odd intervals dur-

(Testimony of David G. Powers.)

ing that period of time. He had charge of the trimming of the coal and of the freight gangs. Somewhere about 1901 my father left the employ of the Pacific Mail Steamship Company in connection with the teamsters' strike. He never thereafter went back to the Mail Company until he got the contract with Mr. Mills in 1910 or 1911; but they were in partnership off and on for the trimming of other vessels from 1901 to 1910 or 1911. Prior to that time my father had been an employee of the Pacific Mail in trimming [745—689] vessels, but he had not, so far as I can remember, been associated at an earlier time with Mr. Mills. The first time that I learned that my father was associated with Mr. Mills in the trimming business, was in 1902.

I did not ask Mr. Donaldson for money after I came out of jail. The letter which I spoke of as having been brought out of the Alameda County Jail, written by Mr. Fiedler, referred to opium matters. I had served out my sentence in jail. That was the only piece of opium business that I was ever involved in. The reason I did not want to go before the Grand Jury was because I feared that if I perjured myself I would be sent to jail again, and of course, Mr. Donaldson and Mr. Gallagher were mentioned in that letter, and I did not want to testify against them. I would have to tell the truth I knew, and I intended to if I went before the Grand Jury. When I had my first conference with Mr. Tidwell we talked both about the opium matter and the Western Fuel matter. Mr. Tidwell said he would think the matter

(Testimony of David G. Powers.)

over, but I do not know exactly what he was to think over. I do not remember that it was some proposition that I had submitted to him. I did have in mind, however, that I might get a job from him.

Redirect Examination by Mr. ROCHE.

Between the date that I was released from the Alameda County Jail and the date that I took up these Western Fuel matters with Mr. Masters, I had not divulged to anyone the information that I had regarding Donaldson or United States Inspector Gallagher. During that period of time I did not desire to give to any official any information which would result in the prosecution of either one of those two individuals. [746—690] That was the reason why I did not wish to go before the Grand Jury.

While I was employed as checker with the Pacific Mail Steamship Company I remember performing duties on the barge "Theobold" at a time when Mr. Freund was acting as customs weigher. As representing said steamship company I had Mr. Freund weigh one in every fifteen tubs, as they came from the barge to go into the ship's bunkers.

[Testimony of Edward Powers, for the Government.]

EDWARD POWERS, a witness called for the United States and sworn, testified as follows:

Direct Examination by Mr. ROCHE.

I now reside and have resided all my life in San Francisco. I am a brother of the witness who preceded me upon the stand. I am now living with my father. I first went into the employ of the Western

(Testimony of Edward Powers.)

Fuel Company about twelve years ago. My brother first went into the employ of the defendant Mills a short time thereafter. I had myself been employed by the defendant Mills keeping time for the trimmers before my brother entered that employment. It was about ten or twelve years ago that I first began to work for the defendant Mills, and that was about a year before my brother began to work for said mills. The defendant Mills was then, I think, in partnership with my father trimming for the Oceanic Steamship Company, so that my employment was really by the defendant Mills and my father. The service rendered by me in that employment consisted in keeping time and watching the chutes on the Spreckels boats at the same time. I am acquainted with the defendant, James B. [747—691] Smith. I was acquainted with Mr. Smith during the time I was assisting Mr. Mills. I left there two and a half years ago, and four years preceding that I was with Mr. Mills, and during that time I was acquainted with Mr. James B. Smith. I have known who he was for a number of years. I first became acquainted with him at the time, or shortly after the time when I was first employed by the defendant Mills and my father as timekeeper. I have been acquainted with the defendant Mills twelve or fourteen years. The relation between myself and Mr. James B. Smith during the last six or seven years has been just that of employer and employee. While Mr. Mills was here, I had very little to do with Mr. Smith, while he was at the office, but while Mr. Mills was away I had quite a few talks

(Testimony of Edward Powers.)

with Mr. Smith. During the last two and a half years I have not been in the employment of the Western Fuel Company. In that period I have not talked with Mr. Smith, except to say "How do you do" to him occasionally. I have known the defendant Mayer ten or twelve years. I was quite friendly with him. I have known the defendant Edward J. Smith casually since 1906. I have come in contact with him two or three times since I left the employ of the Western Fuel Company. Lately I have met him occasionally in the hall, but we have not spoken. I do not know the defendants, Robert Bruce or John L. Howard. My relations with D. C. Norcross, the secretary of the Western Fuel Company are friendly.

BE IT REMEMBERED that thereupon the following testimony was given, and that the following proceedings occurred:

Q. Prior to the moment you took the stand here which was within the last few moments, had you ever made any statement [748—692] of what you knew concerning this case to the attorneys representing the Government? A. I have.

Q. When?

A. At the office of Olney, McCutchen & Olney, Mr. Moore being present.

Q. I am talking about the Government's attorneys now?

A. No. (Last question repeated by the reporter.)

A. I did not.

Q. You did not? A. No.

Q. Have you been requested upon various oc-

(Testimony of Edward Powers.)

casions by the attorneys representing the Government to advise them, or one of them, [749—692½] of the facts within your knowledge relating to this case? A. I have.

Mr. McCUTCHEN.—I object to that as irrelevant and immaterial, if your Honor please.

The COURT.—The objection will be overruled.

Mr. McCUTCHEN.—Exception.

(Witness continuing.) I have visited the office of Mr. McCutchen and Mr. Olney and made a statement to them. Mr. Moore was also present. Mr. D. C. Norcross accompanied me to that office. That was the only occasion upon which I made any statement to the attorneys representing the defendants. I remember calling at the office of Mr. Roche and Mr. Sullivan and meeting those gentlemen there. They requested me to make a statement concerning the facts within my knowledge regarding this controversy. I did not make such a statement.

I continued in my employment with the defendants Mills and my father until I went upon a trip on the steamship "Newport," one of the Pacific Mail Steamship Company's liners. I left the employ of the defendant Mills and my father to go on that trip. I was the engineer's storekeeper on the voyage. I made one trip only. On my return I left the Pacific Mail Steamship Company and went into the employment of the Western Fuel Company. Incidentally, I had worked for the Dunsmuir people, who preceded the Western Fuel Company, and for the Rosenfeld people. I was paid by the Western Fuel Company

(Testimony of Edward Powers.)

for my work with them. I was around with my father keeping time again and fooling around the ships with him or hiring men for him. I worked on the barges. I was also at the same time working for the defendant Mills and for my father in the trimming business. I don't think my brother was employed before the time I left the employment of my father and Mills to take this trip upon the "Newport." He may have been; I don't remember whether he was or not. I cannot fix the precise date of the beginning of my employment with the Western Fuel Company, after my return from the trip on the "Newport." On the barges I was hatch-tender, [750—693] tipping tubs, I was running the engine. The man who tips the tubs is known as the dumper. I was first a dumper, having charge of the tipping of the tubs. I worked in that capacity on various barges. I guess I worked as a dumper for about two years. That was before I became a hatch-tender. I got my orders from the hatch-tender, and he told me what barge to go on. During that two years, I might have occasionally acted as hatch-tender, and sometimes I relieved the engineer. During that two years I seen the defendant Mills around there. During that two years I had no occasion to visit any of the docks in the possession of or under the control of the Western Fuel Company, used for the purpose of discharging imported coal at this port, nor did I visit the offshore bunker or bunkers at any time during those two years in connection with these barges upon which I was employed at a dumper. The barges

(Testimony of Edward Powers.)

that I worked on during that two years were engaged, among other things, in discharging coal into vessels which were being coaled by the Western Fuel Company. After my two years as dumper I was employed on the Pacific Mail track, running the track and bossing the men there. That was at the old mail dock. While I was employed during the aforementioned two years as dumper, my brother David was also a dumper working for my father and the defendant Mills and for the Western Fuel Company. I cannot remember how long I tended track. I believe I was on the track just before the earthquake. I think Dave came up there on that track quite a while before the earthquake. I had nothing to do with the physical condition of the track. I simply bossed the men, and I had charge of rigging the gear. The track was used by the Western Fuel Company for transporting the coal from the barges on the other side of the wharf to the steamer which was on the opposite side. Generally, on such occasions there would be a barge coaling the steamer on her other side. Occasionally while I was tending track I would relieve the hatch-tender or an engineer who was temporarily incapacitated. When I was a dumper on the barges during the two years heretofore referred to, my station would be about ten or forty feet away from the hatch, in the air. I was above the hatch of the barge, on the framework of the hoist. A man would get kind of dizzy trying to look down into the hold of the barge, [751—694] but the hold was within my observation. I could look

(Testimony of Edward Powers.)

down and see the men shoveling coal there, if they were immediately below the hatchway. I could have seen the men scooping the coal into the buckets had I looked down, but I have no recollection that I did so. I do not remember looking down. As to the number of times during an hour that a bucket would be dumped, it is all according to whatever the hatch-tender would hoist. There was an average of forty buckets. It depends on the gang. Some work more rapidly than others. On an average these buckets, on occasions when they would not be weighed, would ascend about every half minute, depending, however, upon the height of the hoist.

After my employment tending the track at the old Mail Dock, I went back to dumping tubs and tending hatch. My time was divided about equally between these two occupations. That went on for about a year and a half. So that, for some period of time before the fire of 1906, I was tending hatch and dumping, and after the fire I became a hatch-tender. In the period that intervened between the time when I left the Mail Dock and the fire, and while I was tending hatch upon these barges, I would have within my observation the men in the hold of the barge. I was hatch-tender on several barges. I have never remained with the barge when the barge would be taken over to any of the offshore bunkers of the Western Fuel Company for the purpose of being coaled. The barges would be already loaded when I took charge of them. During the time that I was acting as hatch-tender before the fire and earthquake,

(Testimony of Edward Powers.)

I saw the manner in which the men would load the tubs. The signal for the taking of weights on the barges was given by the Government weigher or by the hatch-tender. He would say, "Put them on the scales." Some barges had platform scales, and some had hanging scales. The hanging [752—695] scale would not be in the center of the hatch; it would be over to one side, and consisted of a beam or rod, upon the end of which the tub would be fastened and the weight taken. The platform scales would have a shifting platform when coal was being discharged from barges into American registered vessels plying between this port and a foreign port. A United States weigher would be aboard the barges, and he would give the order for weighing. Generally, it was the practice while I was on the barges to weigh a round of tubs. Some weighers would take one round in every 15, and some about once in every three or four hours. It depended altogether upon the personnel of the weigher. The general practice of the Government weighers was to take a round of weights about three to five times a day. I would say that the maximum time intervening between the taking of weights would be three or four hours. That was quite frequently the custom pursued by the weighers.

During the two years to which I referred I sometimes worked at night. The practice pursued by the Government weighers in regard to taking weights at night was similar to that pursued by them in the daytime. When weights were not being taken the weigher would sometimes be right at the hatch, and

(Testimony of Edward Powers.)

sometimes he would be walking around the deck of the barge, and sometimes smoking. Once in a while they would go inside of the cabin. When coal had to be weighed at night and it was raining, some of the weighers stayed right at the hatch. The others of them went into the engine-room shed, and stayed there sometimes for some time. The weights would be taken at night-time the same as in the daytime. I know nothing about the number of weights that would be taken at night-time during the two years when I was dumping. When I was hatch-tender, prior to the fire in San Francisco, weights would be taken every two or three or four hours. I have never known them to take weights only once or twice during [753—696] the night. Sometimes they would hoist about 20 tubs an hour and sometimes maybe 80 tubs an hour. The taking of weights every two or three or four hours would occur whether the tubs were moving rapidly or slowly. If the Government weigher were in the engine-rooom, and particularly at night, I doubt whether he would be able to see the quantity of coal which was contained in the tubs that were hoisted from time to time and were not weighed, but I would not say that he could not see them. I have never seen the Government weigher in the cabin. I have seen him walking up and down the barge. I have not watched him closely enough to say whether he would turn around when each tub came up. It is true that he would sit down upon the barge smoking while this hoisting was going on.

For about six and a half years after the fire and

(Testimony of Edward Powers.)

earthquake in San Francisco I continued to attend to the hatch exclusively upon these barges. I was promoted from hatch-tender to assistant to Mr. Mills, and occupied that position for about four years, I think, and was in the occupancy thereof when I finally left the Western Fuel Company two years ago last July 1st. I began as assistant to Mr. Mills in July, 1907. I had been assistant to Mr. Mills for about four years. Prior thereto and for some time before the fire, I was, as I have said, hatch-tender exclusively. Referring now to the period during which I was thus hatch-tender, I would say that the order of the Government weigher to put the tubs on the scales would be, "Put her on the scales" or "On the scales." This order would be given to the hatch-tender, who would then call a man up out of the hold to help him. At these times they would be filling the tubs with coal. There would be always three tubs in the hold, and they would be numbered consecutively, 1, 2, 3 and 4. The fourth tub would be in the hoist. There are eight men in the [754—697] gang, two men to each tub, and the two attend exclusively to the particular tub to which they are assigned. The tubs come up one after the other in order of numbers. Sometimes we brought up two men instead of one to help put the tubs on the scales. I would call them up by name. In answer to the question whether the men understood in that case that a weight was to be taken, I would say that I don't know what they thought. Sometimes it was not necessary to bring up men out of the hold. We might have the barge-

(Testimony of Edward Powers.)

man to help us, but that was not the general practice. There would be a sort of cessation in the hoisting of the tubs when the order was given for the men to come up from the hold. The tub may be going up and the weigher may have asked for a weight while that one tub was in the process of being discharged. That was the ordinary way of doing business. The men who came up from the hold would help to pull the tub over and land it on the scales. It would take from three to five minutes to weigh each tub. The time in which the men would have to load the tubs remaining in the hold would be increased by the time which it took to weigh the tubs, which would be considerable.

Q. To what extent, if I may use the expression, were these tubs filled during that period of time when they were put upon the scales to be weighed?

A. They were filled.

Q. You say they were filled; to what extent were they filled?

A. That is the only way I can explain it, they were filled.

Q. There might be two ways of filling a tub. Is it not a fact, Mr. Powers—well, I will withdraw that. Just go on and state how they were filled, to what extent they were filled, [755—698] whether they were filled by being just level with the top or whether they were filled to overflowing?

A. Sometimes they were filled to overflowing.

Q. During the time that you were hatch-tender there, Mr. Powers, what, if anything, did you see

(Testimony of Edward Powers.)

done with the tubs which were contained in the hold of these barges with reference to putting more coal in the tubs after the tubs were originally filled and before they were weighed?

A. Sometimes they would put more in when they were weighed.

Q. Is it not a fact, Mr. Powers, that that was a frequent occurrence? A. It was.

Q. During that same period of time to what extent were the tubs ordinarily filled with coal which in fact were not weighed?

A. They were pretty well filled.

Q. You say they were pretty well filled; what do you mean by saying they were pretty well filled?

A. There was not much difference between them and the tubs that were weighed.

Q. You say there was not much difference; what difference was there?

A. There might be a few shovelfuls difference.

Q. Did you ever notice any difference between these tubs more than a few shovels full?

A. Yes, sir, I did.

Q. Upon how many occasions did you notice that?

A. When the customs man made me take it off the top, made me scrape the top off.

Q. How frequently did that occur?

A. Several times.

Q. What has been the situation there with reference to the occasions that occurred during the time you were hatch-tender, when buckets would be filled to overflowing when weighed and not [756—699]

(Testimony of Edward Powers.)

filled when not weighed?

A. They were filled to suit the custom weigher. If he objected they scraped the top off of them and they were told not to do it again.

Q. That is not the question I asked of you. You have testified that the tubs that were weighed were well filled; is it not true that you have frequently during that time that you were hatch-tender seen buckets that were weighed filled to their uttermost and buckets that were not weighed filled to such an extent only that the coal sometimes would not reach the tops of the tubs; is not that true?

A. Once in a great while, yes, sir.

Q. Did not that frequently occur?

A. No, not so that you could not see the top. They were always pretty well filled.

Q. After weights would be called for by the customs official upon these boats, how frequently did you see men in the hold of the barge put more coal in the buckets?

A. When they are clear of the hatch you cannot see the men.

Q. I am not asking you what you could not see, I am asking you for what in fact you did see; how frequently did that occur?

A. If they were digging down into the coal in the barge the more they could put on a tub the better it would be for themselves, they would have more head-room then.

Q. You say the better it would be for themselves, and I suppose it would be better for the Western

(Testimony of Edward Powers.)

Fuel Company too, would it not?

Mr. McCUTCHEN.—That is not fair. Do you think, Mr. Roche, that that is fair? That certainly is very unfair.

Mr. ROCHE.—I will put it this way: Q. How frequently did you see these men put more coal into the buckets that were about to be weighed when weights would be called for? [757—700]

A. I have seen them do it.

Q. Is it not the fact, Mr. Powers, that you have seen them do it frequently during the time you were hatch-tender?

A. I have seen them do it quite often.

Q. You have testified, Mr. Powers, that weights would sometimes not be taken for 3 or 4 hours, upon one of these barges; is that true? A. That is true.

Q. Is it not a fact that in those instances, or rather, in a great many of those instances, the tubs which were not weighed did not contain as much coal as the tubs which were weighed? A. That is true.

During the time that I was hatch-tender I did not receive any complaints from the engineers in the employ of the Pacific Mail Steamship Company regarding the shortage of the coal, nor did I hear any complaints made by anybody else. I knew one or two of the engineers of said company. The situation that I have described continued in a general way up to the time I became assistant superintendent to Mr. Mills. When we were coaling a ship at night we had some bulkhead lanterns there, that is, ordinary lamps fitted into a box or cage; and the steamer which we

(Testimony of Edward Powers.)

were coaling was supplied with electric lights on the side of the ship, and an electric light cluster shone right into the hatch. There were also some lights up near the falls near the bunker. I hardly think it would be possible for a person who was on the deck of the barge and removed some distance from the hatchway to see the contents of the tubs as they would rise at night. During the time that I was assistant to defendant Mills I would when he went to the country become familiar with his dock books or diaries, for I [758—701] would then keep them. I know that he kept those books ordinarily. I found that out when I became his assistant. While I held that position I would go into his office and talk with him and confer with him regarding the duties I was performing and concerning the business of the company. When he went to the country he explained the books to me. I did not keep the books the first year I was in the office. It was in the second year. He explained the entries to me then, and told me how to make out the reports every day and how to keep the books. When I became assistant to Mr. Mills my duties were practically co-extensive with his, except that I was under him.

Sometimes the barges which would coal vessels would get their coal direct from a steamer, sometimes from the yard, and sometimes from the off-shore and inshore pockets. We would get coal from the inshore bunkers by carts. The pockets would be weighed. I believe the coal would also be weighed when it would be brought to us in carts. On those

(Testimony of Edward Powers.)

occasions it would be weighed on the Miller scales, which were located in front of the office at Steuart and Harrison. With the exception of a very few instances the coal which went into the barges was weighed before it reached the barges, so that I would know the exact quantity of coal that was checked into the barge. It was not a general practice to bring coal from the yard to the barge. That was done on infrequent occasions. That yard was located on the opposite side of the street. When coal was brought from the yard to a barge, it would be weighed over the track scales of the Western Fuel Company, and a record would be kept of that coal; so that the weight of the coal would be taken whether it came from the inshore bunker by cart, or from the yard by cart, or directly over the side of a ship, or from the pockets of the offshore [759—702] bunkers. I got a report showing the actual weight of the coal and of each quantity of coal. The defendant Mills would attend to the giving of the immediate instructions with reference to the quantity of coal to be placed upon these barges from time to time. The instructions would first be given to somebody else other than myself. I had nothing to do with the carrying out of the instructions. I would not go to the offshore bunker to see that the coal was laden into a barge, but I have been there once in a while when they were loading. I never went over to the offshore bunker with a barge for the purpose of getting on a certain quantity of coal. Sometimes I visited the Folsom Street dock.

(Testimony of Edward Powers.)

I have been up on the bunkers occasionally. I was very seldom up on the track on the bunkers when I was assistant to the defendant Mills. I might have gone up there once in a week, or once in a month, or twice in a day. On such occasions I would stay just a few minutes. I was present on occasions when coal was being discharged into the towers or hoppers, and from the towers or hoppers by means of cars into the bins below. When I became assistant to the superintendent the Western Fuel Company had possession and control of the wharf at Folsom Street, and I believe at Howard Street. Mission Street, I think they acquired afterwards. I don't think they had Green Street at that time. I have been up to Green Street once or twice. I believe the Western Fuel Company had the Mission Street dock before they acquired Folsom Street. I have been up at Mission Street several times. Eddie Mayer was the weigher there. The scales, when I first visited the Mission Street dock, were located up the track nearest the street or shore line. I do not remember whether the scales were elevated above the track or were on a level with the track at that time. Afterward the scales were changed to the offshore side, very near the extreme east end of the dock. I have been [760—703] in the scales-house at Mission Street. I do not remember in what direction the weigher was obliged to face after the scales-house was changed towards the offshore bunkers. I was more familiar with the Folsom Street dock than the Mission Street dock. I know the position occupied

(Testimony of Edward Powers.)

by the scales-house at the former. I know that there is now no covering over the bunkers at Folsom Street, but I do not know what the conditions were previously. I do not know when the covering was taken off. I have no knowledge upon that subject. The Folsom Street dock and the bunkers have been in their present condition all the time that I have been employed by the Western Fuel Company; there has been no change that I know of. I had very little to do with these bunkers in the discharge of my duties. On the occasions when I visited the Folsom Street bunkers I did see coal being discharged. The towers or hoppers are located over the inshore bunkers. I have seen the coal coming through the chutes of the hoppers into the cars beneath. I never assisted in loading the cars. I have seen some coal drop down from the sides of the cars. Sometimes a lump would lodge itself in the chute, and they could not close the door until they pried that loose, and so naturally the coal ran out, and would continue to run until they closed the door of the chute. In the meantime the coal would run in the bunkers. I never on any occasion saw coal being discharged from any of those towers directly into the bunkers below.

I was not, as assistant superintendent to Mr. Mills, assigned to any particular place. I was all over the front, wherever a barge was working. I would be all over,—sometimes on the bulkhead, sometimes on the steamers, and sometimes on the barges. I did not notice any difference in the method of procedure during this time that I was assistant superintendent

(Testimony of Edward Powers.)

[761—704] as compared to the time when I was hatch-tender. I used, as assistant superintendent, to remain maybe ten or fifteen minutes at a spell on the barges. During the time I was acting as assistant to Mr. Mills, from July 1907, to July, 1911, I frequently saw liners being coaled—frequently saw coal being taken out of barges and discharged into these liners and frequently saw the operation as the result of which the coal was taken out of the barge and dumped into the liners. I saw weights taken during that period of time. There was no difference, so far as the filling of the tubs was concerned then as compared with the method of filling said tubs when I was hatch-tender, and my evidence would be the same so far as the loading of the tubs was concerned, whether they were weighed or not weighed. While I was assistant superintendent there were quite a few complaints from engineers of the Pacific Mail Steamship Company regarding the shortages of coal. I communicated these complaints to the defendant Mills. I am acquainted with Marine Superintendent Chisholm of the Pacific Mail Steamship Company. I knew he had charge, as marine superintendent, of the coaling of the company's vessels. The complaints that came to me from engineers were not always about shortages. Sometimes they had reference to the quality of the coal. I received complaints concerning shortages of coal quite often,—whenever they could catch me, that is, I guess, when I did not see them coming. I cannot remember how often I received complaints while I was assistant superintend-

(Testimony of Edward Powers.)

ent, but it was quite often. I would say in answer to these complaints that we were selling the coal by weight, and that the United States custom men were weighing it. When I spoke to the defendants Mills about the matter, he would tell me that the United States custom men were weighing the coal. He gave me the same excuse that I was giving the other men, and it was a true excuse. The custom weighers were weighing the coal. In answer to the question whether the defendant Mills ever suggested to me the propriety of telling the men in the hold that they ought not to put any more coal in the tubs that were weighed than in the tubs that were not weighed, I would say that Mr. Mills told me that the chief engineers were always growling,—that it [762—705] was part of their job to growl. He asked me if I had any trouble with the weighers, and I said no, that they were weighing the coal, and that they were not kicking. Mr. Mills told me not to have any trouble over there. I have no distinct recollection of his telling me to suggest to the men in the hold that they should not put any more coal into the tubs that were weighed than in the tubs that were not weighed, but he may have told me that—I don't remember, that is a long time ago; he may have told me that, I have forgotten. Referring now again to the time when I was hatch-tender, I would say that the fine coal in the barges naturally drops down, whereas the lump coal runs off into the wings. The conveyor is located right over the center of some barges.

Q. When you come to discharge the barges, what

(Testimony of Edward Powers.)

have you observed with reference to the character of the coal which is contained in the tubs that are weighed as compared with the character of coal that is contained in the tubs that in fact are not weighed?

A. It is about an average.

Q. You say it is about an average; during the time that you were working as a hatch-tender upon these barges and while you had within your observation the men working in the holds of these barges loading coal into the tubs, did you ever see these men when weights were called for fill the tubs with fine coal so that the tub would be completely filled, and the crevices between the coal likewise filled?

* * * * *

A. Well, it was according to where they were working; if the barge was listed to starboard there may be three tubs on one side taking the list out; if she were upright they would work it out even. [763—706]

Mr. ROCHE.—Q. Without reference to whether the barge was listed or what the men were doing, when the buckets were not weighed, have you or have you not observed the men upon occasions when weights would be called for put additional coal upon the tubs, part of which was fine coal?

* * * * *

A. When they were in the hatch I could see them, but when they were out of the hatch I could not.

Mr. ROCHE.—Q. You mean away from the hatch?

A. Yes.

Q. Upon the occasions when you did see them while

(Testimony of Edward Powers.)

they were in the hatch and loading the buckets in the hatch, did you see that occur? A. I did.

Q. Now, let me ask you this question,—you have been in the coal business for quite a long while; does a bucket that is loaded with fine coal weigh more than a bucket that is loaded with lump coal?

A. Well, the fine coal should weigh the most because the lump coal is not stowed as tightly in the bucket, but if the bucket is mixed with fine and lump coal I believe that is the heavier.

Q. Let me put the question this way to you: If a bucket that is mixed with fine and lump coal has additional fine coal alone put into it, it increases the weight to a considerable extent, does it not?

A. It increases the weight, yes.

* * * * * * * *

Q. If a tub is filled up to about level with the top, with mixed coal; that is, with lump coal and fine coal, can you put more fine coal into that bucket than you can put lump coal and fill it to its uttermost?
[764—707]

* * * * * * * *

A. You certainly could put more fine coal into the bucket.

I don't think Mr. Mills explained to me what the entries in his dock books or journals represented; he just told me how to make the entries in the book and how to make the reports. I made some of the entries. I don't recall any period of time during which I was acting as assistant to the superintendent when complaints were not made by engineers of the Pacific

(Testimony of Edward Powers.)

Mail Steamship Company and other boats regarding shortages of coal. The complaints were made from time to time during the entire interval. I would give the excuse and then walk away from them. They may have said lots of things but I did not hear what they said. I think Mr. Chisholm once told me about the matter, and said that Mr. Bunker had complained. I believe he also called my attention to a complaint made by Mr. Hamilton, the chief of the "Siberia." I believe also that I had complaints direct from Bunker and Hamilton, as well as from other engineers. I also received personal complaints from Thomas Sawden, chief on the "Peru," and then on the "Mongolia." There was another complainant, whose name I do not recall; he is now dead. Thomas Sullivan, who succeeded Mr. Sawden on the "Mongolia," also complained. During the receipt of these complaints I was familiar with the books of the defendant Mills.

Q. During the time that you were assistant to the superintendent, keeping the records, and furnishing the defendant, Mills, with reports from time to time, of course you knew, did you not, the exact quantity of coal which was checked into the barge, and the exact quantity of coal that was checked out of the barge? [765—708]

A. I did, by the reports that were given to me.

Q. By the reports that were given to you?

A. Yes.

Q. And you knew, did you not, that at least in a great number of cases, there was more coal taken out

(Testimony of Edward Powers.)

of the barge, so far as weight was concerned, and so far as your records were concerned, than was put into the barge?

A. So far as the records were concerned, yes.

Q. How frequently did that occur, as compared with the times it did not occur, in your judgment, during the time that you were acting as assistant superintendent? A. It occurred regular.

Q. Isn't it a fact that it occurred practically at least as often as 95 per cent? A. Yes.

Q. Now, knowing as you did, from the records, that at least in weight, there was more coal checked out of the barges than was in fact laden into the barges, did you say anything to the defendant Mills about that, when these complaints were made to you?

A. No.

Q. Did Mr. Mills call your attention to the fact, when you communicated these complaints to him, and he said, "Well, the Government weigher is weighing the coal"—did you say anything to him; did you call his attention to the fact that his own personal records disclosed that there was more coal checked out of the barge than was checked in?

* * * * *

A. No.

Mr. ROCHE.—Q. Did the defendant Mills ever discuss with you the cause for the difference in weights that were checked in, as compared with the weights that were checked out? [766—709]

A. He did not.

Q. He did not?

(Testimony of Edward Powers.)

A. No, except when he ran short, he made a howl, that is all.

Q. How frequently, how often did the barge run short?

A. Two or three times—to my knowledge, a couple of times—two or three times.

Q. Was that the subject matter of any discussion between yourself and the defendant Mills?

A. No.

Q. Well, you say that the defendant Mills would holler if the barge went short. Did you have any trouble with him from the barge going short?

A. No, he just spoke of it, that is all.

Q. You say he just spoke of it; what did he say?

A. That barge ran short; that is all he said.

Q. Did he make any complaint about it running short?

A. I don't remember whether he did or not.

The COURT.—Q. What do you mean by "howl"?

A. Well, "The barge is running short; what is the matter." That is all.

Mr. ROCHE.—Q. That is, when a barge did run short, he would say, "What is the matter"?

A. Yes.

Q. Did he say it in the same tone of voice that you said it, or would he say it in a different tone of voice?

* * * * *

A. He would say it in a moderate tone of voice.

Q. Can you recall anything else, any other language used by the defendant Mills, excepting that, in connection with a shortage when it would occur upon a barge?

(Testimony of Edward Powers.)

A. No, I cannot recall any other.

Q. You can't? A. No. [767—710]

Q. Are you prepared, are you in a position to testify distinctly or clearly that he did not say anything else? A. No, I am not; I don't remember.

Q. You don't remember?

A. Don't remember whether he did or not.

Q. Now, of course, you knew—I will withdraw that question for just a moment. So far as the coal contained in the pockets of the offshore bunker is concerned, what knowledge have you upon the subject, as to whether the coal had or had not been weighed?

A. It had been weighed.

Q. It had been weighed?

A. To the best of my knowledge.

Q. Well, now, from whom would you get the weights of the coal that came out of the offshore pockets, or pockets of the offshore bunkers?

A. Edward Mayer.

Q. The defendant, Mayer? A. Yes.

Q. Did he ever at any time tell you—did he ever tell you that the figures which he gave you representing the weight of the coal coming out of the pockets of the offshore bunker, were not correct?

A. He did not.

Q. What statement, if any, did he make regarding the accuracy of those weights?

A. He just left the weights on the desk and walked away.

Q. By the way, when a barge would go over there ordinarily for coal to the offshore bunker, would they

(Testimony of Edward Powers.)

clean out a pocket? A. Yes.

Q. By the way, do you know how much coal would ordinarily be contained in each pocket or compartment of the offshore bunker on the Folsom Street dock? [768—711] A. They were different.

Q. You say they were different?

A. There were different amounts.

Q. What would be the approximate weight for one pocket, as an average? A. 45 tons, or 50.

Q. And they run up, sometimes, to 70 tons?

A. I think so.

Q. When a barge, for instance, would want 500 tons of coal, would you, or, rather, in loading that quantity of coal upon the barge, would you discharge one pocket after the other, until you got approximately that amount, or until all of the pockets that were open were discharged?

A. I believe they would tell Mayers what pockets to put into the barge.

Q. And you would get the exact weight of the coal contained in those pockets? A. Yes.

Q. And then you say when the coal would be brought to you by—I will withdraw that question. When the coal was discharged from a ship which was discharging at the Folsom Street dock, or at any other dock, would the coal first be weighed before you would get it? A. Yes.

Q. Well, now, just describe to the jury how would you get that coal, where would the barge be located, and how would you get the coal that came direct from the ship?

(Testimony of Edward Powers.)

A. It would be loaded down toward the end of the wharf, it would be loaded through the pocket to the barge.

Q. That is what I want to get at. The barge would lay alongside one of the pockets, or some of the pockets of the offshore bunker; is that correct?

A. Yes.

Q. And the pockets would be entirely cleaned?

A. Yes. [769—712]

Q. The coal, then, would be discharged from the ship in which the coal was imported into this port by means of these hoppers to which you have referred already, or towers? A. Yes.

Q. And the coal would then be dropped from the towers or hoppers into the cars? A. Yes.

Q. And run upon the scales and weighed?

A. Yes.

Q. And then the coal would be switched over upon one of the other tracks, and brought down to the pockets which were open and which were leading into the barge? A. Yes.

Q. And the coal would be taken into those pockets and would be permitted to go right directly to the barge; is that correct? A. Yes.

Q. So that the coal would all be weighed?

A. Yes.

Q. Now, it frequently happened, did it not, or sometimes happened, that a barge would be cleaned up within two or three days? A. Yes.

Q. In other words, that a quantity of coal would be put upon a barge, and that coal taken over to a

(Testimony of Edward Powers.)

boat and discharged into the boat, and a cleanup would occur? A. Yes.

Q. That sometimes occurred? A. Yes.

Q. And it is also true, is it not, Mr. Powers, that in those instances where a quantity of coal would be taken upon the barge, and the barge taken over and discharged into a boat, or boats of the Pacific Mail Steamship Company, or some other line, or that line and some other line, that a cleanup would occur, in other words, all of the coal on the barge would be taken off? A. Sometimes.

Q. Sometimes; and it is a fact, is it not, that in almost every instance where that occurred, where coal was put into the barge [770—713] and taken out within two or three days, or within a day or two and a cleanup would occur, that there would be an overage? A. Yes.

Q. And it sometimes occurred that in some instances, at least, there would be a considerable overage; isn't that true? A. In some cases, yes.

* * * * * * *

Q. Did you ever pursue any investigation in instances such as those, to find out how a quantity of coal checked into the barge, having a particular weight, would weigh out of the barge within a day or two at another weight, thereby creating an overage in the discharge of the barge? A. No.

Q. You say you never did make an investigation?
A. No.

Q. Let me put the question direct to you, Mr. Powers: You were in charge of these barges as assistant

(Testimony of Edward Powers.)

superintendent? A. I was.

Q. You knew the weight of the coal that was put into the barge, didn't you?

A. If I had the books, I did, yes.

Q. The records came under your supervision, first, didn't they, the records they turned over to you?

A. While Mr. Mills was away.

Q. How often would he go away?

A. On his vacations.

Q. Do you remember a particular year during which he did go away? I notice in some of these books, Mr. Powers, in your handwriting, there, there would be an overage; for instance, I notice there is an overage on June 3, 1909, 106 tons, 809 pounds. Now, without going into these matters in detail, without directing your attention at this time to any specific item, or any particular item contained in this dock book, I want to ask you what was [771—714] it that caused the overage in these particular instances in which the entries were made in your own handwriting, showing an overage? A. I don't know.

Q. You say you don't know? A. Yes.

Q. Have you any idea at all upon the subject?

A. Very little.

Q. Well, very little; however small or infinitesimal that knowledge may be, Mr. Powers, we would like to have the benefit of it. What is your knowledge upon that subject, however small it may be?

A. The only information I have is they were loaded with so much coal and they overrun, that is all.

Q. Of course, that is shown by the books, but I am

(Testimony of Edward Powers.)

asking you, in view of the services which you rendered on behalf of the Western Fuel Company, and the knowledge that you acquired during the time you were hatch-tender, and during the time you were assistant to the superintendent, Mills—what knowledge have you upon the subject, as to the cause of this overage? A. Moisture helped a little.

Q. You say moisture helped a little? A. Yes.

Q. What kind of moisture?

A. Moisture out of a hose.

Q. Oh, moisture out of a hose? A. Yes.

Q. Was that Spring Valley moisture?

A. No, salt water.

Q. To what extent was this salt water moisture responsible for the overage?

A. Well, they turned the hose in, and, I guess, that added a little to the weight.

The Chinese crew on the steamers would play the water [772—715] upon the coal on the barge sometimes for three or four hours. I stopped that practice once or twice. The practice was an occasional one. It would frequently happen that coal would be discharged from the barge into the vessel without any salt water being upon it at all, and that notwithstanding that fact there would be an overage. I also thought that the method of weighing, that is to say, the custom of having some tubs go on the scales a little heavier than others, might be responsible for the overage. It is true that the overage, or a large part of it, was due to the fact that there was more coal in the tubs which were weighed than there was in

(Testimony of Edward Powers.)

the tubs which in fact were not weighed. In Mills' diary for 1909 the page commencing Monday June 14, 1909, is the first page in this diary upon which entries in my handwriting appear. The entries in that diary, commencing June 1, 1909, and extending along until the defendant Mills commenced to again make entries, I believe were made by me from reports which I obtained.

The reports showing the weights of the coal which was laden into these barges from the various steamships and bunkers, were obtained by me and entered by me in this book for the period indicated; and the same is true with reference to the weight of coal checked or discharged from the barges. When Mr. Mills was himself making the entries he got the items concerning the barges directly from me, or by message sent by me; that is to say, all of the figures relating to the barges were supplied and furnished in the first instance by me; so that I was equally as familiar with the supposed weights of the coal as checked into the barge and checked from the barge as was the defendant Mills. After sending these reports to defendant Mills I did not ever examine the books for the purpose of ascertaining [773—716] whether the reports sent him by me were correctly entered in the books. I have no recollection of the barge "Theobold" receiving from the offshore bunkers on December 9, 1910, 326 tons, 1330 pounds of coal, and on the 10th and 11th days of December, being within the next 48 hours, discharging this cargo she had to the "Manchuria" and checking out 466 tons, 1299

(Testimony of Edward Powers.)

pounds, or an increase of 42.6 per cent.

Q. Have you any recollection at all at this time of any transaction which occupied only a period of three days, during the first of which days a quantity of coal was discharged in the "Theobold" and during the next two days that coal was discharged from the "Theobold" and there being an overage existing of some 42 per cent?

A. I did not pay any attention to that; I did not remember that. Mr. Mills did not say anything to me, so I did not pay any attention to it.

The reports which I sent to Mr. Mills of the weight of the coal checked out of the barges into vessels of the Pacific Mail Steamship Company were in the handwriting of [774—716½] E. P. Park, chief weigher of the Pacific Mail Steamship Company. The reports which went to Mr. Mills showing the weights of the coal checked into the barges were in the handwriting of Eddie Mayer. When I had the books I copied those entries in them in my own handwriting. Eddie Mayer delivered these reports directly to Mills. It was the reports of Park that I sent to Mills. The only time Mayer ever gave any reports to me was when Mills was away on his vacation and I had charge of the books. I did not know anything about the quantity of coal that went into the barges excepting during these vacations of Mr. Mills. Sometimes Bud Hopkins, the timekeeper of the Western Fuel Company, as well as myself, would make entries in the diaries of Mr. Mills in the absence of the latter.

(Testimony of Edward Powers.)

Q. During the time you were acting as assistant superintendent, when Mr. Mills was himself in the city, you, of course, knew, did you not, or became familiar with the fact that overages occurred, from time to time, upon the barges?

A. No, I have no definite knowledge of that.

Q. You say "definite knowledge"?

A. I might have looked over Mills' shoulders when I was talking to him, and saw overages there; otherwise, I didn't know.

Q. Did you ever make any inquiry of the defendant Mills to ascertain whether the barges were, in fact, over?

A. I don't remember whether I did or not.

Q. Is that the best answer you can make to that question? A. Yes.

Q. Did the defendant Mills, whenever a shortage would occur in the discharge of a barge, speak to you about the shortage?

A. He spoke once or twice concerning the shortage.

Q. There were not very many shortages, were there? A. No. [775—717]

* * * * *

Mr. ROCHE.—Q. Now, of course, you kept these books, did you not, in the same way that the defendant Mills kept the books during the time that he was in San Francisco? A. Well, I tried to do so.

* * * * *

Q. Did it sometimes occur—in fact, did it not frequently occur, Mr. Powers, that one of the barges,

(Testimony of Edward Powers.)

during the time that you were assistant superintendent, would take on coal one day, either from a vessel in which coal was being imported to this port, or from some of the pockets of the offshore bunker, and discharge that coal within two or three days thereafter? A. Yes.

Q. And is it not also the fact, Mr. Powers, that in those particular instances, where the barge would be clean, upon a particular day, and where she would take on coal and discharge the coal thus taken on within two or three days, that there would be quite an overage?

A. It states in the book; I don't exactly remember how much of an overage there would be.

Q. Haven't you any recollection upon that subject at all?

A. I know there were overages on the barge, I don't know how large or how small.

Q. I know, but as assistant superintendent, or as assistant to the superintendent, Mills, employed by the Western Fuel Company, and having charge of these transactions, didn't you familiarize yourself from time to time with the weights of the coal taken on and discharged from these barges?

A. When I had the books, I did.

Q. When you did not have the books?

A. No. [776—718]

Q. You say you did not? A. I did not.

Q. Well, when these complaints were being made to you from time to time by engineers in the employ of the Pacific Mail Steamship Company, for instance,

(Testimony of Edward Powers.)

confining your attention at this time to those complaints, did you know whether there was any justification for the complaints?

A. Well, I thought there might be.

Q. You thought there might be. Why did you think there might be?

A. The barge showed a little overage; I thought there might be something to do with it, moisture and so forth.

Q. Of course, that is not a complete answer to my question. You say that you did think there might be some cause for the complaints made from time to time by the different engineers, with reference to the quantity of coal or the shortage of coal, or the quantity of coal that was discharged into the ships upon which they were acting as engineers. Now, I will ask you why, in your judgment, or rather, why did you believe or did you think or conclude that there was justification for those complaints?

A. The fact that the barges overrun; they show in the book they overrun.

Q. And that indicated to your mind what?

A. Well, they were getting less coal than was charged to them.

Q. Well, now, having that knowledge, or having that belief in your mind that these steamships were getting less coal than was charged to them, and having knowledge, as you have testified, concerning these overages, did you have any conversation of any kind with the defendant Mills regarding the overages that occurred from time to time, according to

(Testimony of Edward Powers.)

your testimony, about 95 per cent of the discharges on the barges? [777—719]

A. I just mentioned, as I said this morning—I mentioned that to Mr. Mills, and he said he was selling the coal by weight, and not by measurement.

Q. Was that the only answer he made?

A. Yes. I do not remember having any conversation with the defendant James B. Smith upon that subject.

I think I reported the Bunker complaint concerning the overages to the defendant, J. B. Smith. Bunker was the chief engineer of the "Manchuria." As far as I can remember I told Mr. Smith that Bunker was kicking, and I believe he replied to me, "He is always kicking," or something like that. That is all I remember that he said. I never had any conversation with defendant James B. Smith about how it happened that the Pacific Mail Steamship permitted these shortages to exist.

Mr. Smith's office, have a conversation with him about Mr. Schwerin, the head of the Pacific Mail Steamship Company. Mr. Smith asked me regarding the trimming of the ships, and whether he could save money in the discharge of the barges by having my father do the work. I told him he could. He said he would put the matter up to Mr. Schwerin, and let me know. That is the only time Mr. Schwerin's name was mentioned so far as I can remember. I don't remember any conversation with the defendant Mayer about these overages on the

(Testimony of Edward Powers.)

barges, or the alleged discrepancy existing between the in-take weight and the out-turn weight. I recall the storeship "Algoa." It was, I think, about five years ago that coal was laden into her. I could refresh my memory from the records of the defendant Mills as to the time and the quantity of the coal. I did not have charge of the loading operation, though I was assistant superintendent at the time. I think one of the vessels from which the "Algoa" was loaded was the "Indra," and that the other was the "Thyra." The coal was laden into the "Algoa" from these two vessels over the side. It was weighed and a Government weigher was present. By over-side [778—720] loading I mean that the vessels were discharged of their coal into the "Algoa" by means of tubs hoisted up; in other words, that the coal did not pass out of the Folsom Street dock or go through the yard. It was weighed on the deck of the discharging ships by averaging the weights.

(Mr. Roche, of counsel for the Government, here directed the attention of the jury to a portion of the Mills dock books or diary of 1908, which book was already in evidence. The portion of said book to which the attention of the jury was directed is indicated in the testimony that next follows.)

Mr. ROCHE.—Under the date of Monday, February 3, 1908, which represents a final day of discharge, are the following figures and data:

"Indra.

(Testimony of Edward Powers.)

103 tons, 2210 lbs., yard bunkers;

656 tons, 1990 lbs., offshore bunkers;

6248 tons, 652 lbs., 'Algoa.' "

Making a total discharge from the steamship "Indra" of 7009 tons, 372 lbs. And then in lead pencil is the following: "Short, 268 tons, 1868 lbs." Now, I desire to direct the attention of the jury to that portion of the same diary under the dates of February 11 and February 14, 1908; under date of Friday, February 14, according to the books kept by the defendant Mills, there were taken out of the "Thyra" the following quantities of coal:

"539 tons, 1840 lbs., to the offshore bunkers;

2170 tons, 1461 lbs., to the steamship 'Algoa';

883 tons, 2100 lbs., into the barge 'Melrose';

249 tons, 1490 lbs., into the barge 'Nanaimo'; [779
—721]

888 tons, 1020 lbs, into the barge 'Theobold';

151 tons, 450 lbs. into the 'Shasta';

60 tons, 1390 lbs., into the barge 'Pinole';

96 tons, into the same barge;

70 tons, 120 lbs., into the 'Thyra';

Making a total of 5110 tons, 911 lbs., and a shortage of 69 tons, 1329 lbs."

According to my recollection the coal in the "Algoa" came from the vessels "Indra" and "Thyra." The "Algoa" was used as a storeship. After she was loaded she was towed to Mission Bay. Her hatches were then put on. I do not remember whether I was, or not, on the "Algoa" when she was loaded, or when she had completed loading, but

(Testimony of Edward Powers.)

I do remember boarding her before she was discharged.

Mr. ROCHE.—I suppose counsel will admit that the additional 6248 tons, 652 lbs. of coal discharged from the “Indra” into the “Algoa” and the 2170 tons, 1461 lbs., discharged from the “Thyra” into the “Algoa” makes a total quantity of coal or cargo of coal amounting to 8418 tons, 2113 lbs.?

Q. Do you recall, Mr. Powers, the discharge of the “Algoa”? I don’t mean the date, but do you recall the circumstance that she was discharged?

A. I do.

Q. Where was she discharged, if you recall?

A. Discharged while lying at Mission Bay.

I remember some five or six hundred tons being taken out of the “Algoa,” but I don’t remember whether it was during the year 1908. I don’t know the date. After that quantity of [780—722] coal was taken out of the “Algoa,” she still lay in the stream, and I boarded her. The hatchways were on and closed. I do not recall whether they were battened down, and I do not remember whether there was a tarpaulin over them. After the quantity of coal hereinabove referred to was discharged from the “Algoa,” the hatchways were replaced. I do not recall the date when she next discharged. I do remember that the coal became heated. The coal was not actually burned, however. There was no evidence of that. The coal at the top at the time of the discharge of the “Algoa” was dry, but underneath it was moist, where the coal was heating. The upper

(Testimony of Edward Powers.)

part of the cargo, however, contained less moisture than when the ship had been loaded. The cargo was discharged into the barges. The coal was ultimately discharged from the barges into steamers. I should say that the "Algoa" lay in the stream with this cargo for about from one year to 18 months, not counting, of course, the first discharge of five or six hundred tons. The total period may have been two and a half years, but I think it was 18 months.

Q. You have had called to your attention a short while ago that there were 8418 tons, 2113 lbs. of coal laden into the "Algoa"; after the "Algoa" had been located in that stream 18 months, or whatever may be the period of time that she was there, with part of that cargo heated in the bottom of her hold, when that boat discharged did she check out more coal in weight than had been discharged into her, or loaded into her? A. I don't know.

Q. You do not know? A. I do not.

Q. Could you refresh your recollection from the books kept by the defendant Mills. [781—723]

A. Well, as each barge load was hoisted out of it I put that in the book. I did not make the total of the entire cargo and all that was discharged.

Q. Who checked the weights up at that time?

A. I did.

Q. In your own handwriting?

A. In my own handwriting.

Q. Of course there was no customs weigher present at that time, was there? A. No, sir.

Q. What, if anything, did you do with those

(Testimony of Edward Powers.)

weights as they were being taken?

A. I made an entry in the book.

Mr. McCUTCHEN.—This was not weighed for the purpose of delivery to drawback vessels?

Mr. ROCHE.—No, but it was weighed afterward. And I will show just what happened afterward. I will show that there was a still further increase.

Q. You superintended the weighing, did you not?

A. I sent the weigher out there.

Q. And were you present when the coal was being discharged?

A. I was there off and on. Maybe I would not go there for a day, maybe I would go there once a day or maybe I would go there twice a day.

Q. The weigher was an employee of the Western Fuel Company, was he not? A. He was.

Q. And the coal was not being weighed, as Mr. McCutchen has suggested, for the purpose of discharging into any other ship at that time; in other words, it was simply being checked into the barge?

A. It was being checked into the barge for any steamer that called for it.

Q. But what I mean is this,—when the coal was to be checked [782—724] out of the barge it was again reweighed; that is true, is it not?

A. That is true.

Q. So that the weight that was being taken was for the purpose of determining the quantity of coal which was being discharged from the “Algoa” and the quantity of coal put on each barge? A. It was.

Q. Do you recall how that coal was weighed, as

(Testimony of Edward Powers.)

to whether it was weighed by average weights?

A. Average weights,

Q. And did you direct that it be correctly weighed?

A. I did.

Q. Have you any recollection at all, Mr. Powers, as to whether the weight of that cargo under the circumstances detailed by me and after that cargo had remained in that ship as long as you think it did remain in that ship weighed over or short?

A. You mean the steamer itself, the "Algoa"?

Q. Yes, the "Algoa"?

A. I don't know how it weighed.

Q. You don't know how it weighed?

A. I never have figured the total amount.

Q. These figures indicating the weight of the coal taken out of the "Algoa" were sent by you to the defendant Mills?

A. I made the entries myself, I believe, in that case.

Q. Do you recall whether you made the entries at the time the first portion of the cargo was removed, the 400 or 500 tons? A. I don't remember.

Q. I will hand you the diaries for 1908 and 1909; I call your attention to June 3d, 1908, and August 26, 1908; first, I will call your attention to June 3, 1908, when the 500 tons or so were taken out of her. The vessel completed her discharging on the 29th day of June, 1910?

A. That is Mr. Mills' writing. [783—725]

Q. Does the record which you now have and which you say is in the handwriting of Mr. Mills, show a

(Testimony of Edward Powers.)

discharge of any part of that cargo into the barge "Melrose"? A. You mean on those dates?

Q. On June 3d? A. Yes, sir.

Q. How many tons and lbs.?

A. 316 tons, 779 lbs.

Q. Now, turn to August 26, 1908. Does it also show there? A. It does.

Q. On the 26th of August, 1908, there was how much coal taken out of the "Algoa," and upon what barge was it laden? A. 227 tons, 1392 lbs.

Q. And that was laden on the barge "Melrose"?

A. Yes, sir.

Q. Now, turn to the diary of 1909, to April 8th, 9th and 10th; those entries may be in your handwriting? A. Mr. Mills' handwriting.

Q. Will you look on April 8th and see whether any coal was discharged from the "Algoa" into any barge? A. On April 8th there was; yes, sir.

Q. How many tons?

A. That is the addition of April 7th with the 8th.

Q. Look at April 10th and you will see that it will give the entire addition up to that time.

A. Yes, sir.

Q. Up to April 10th what is the quantity of tonnage discharged? A. 1014 tons, 1335 lbs.

Q. Now, look at April 24th and see if there is a total there of the coal discharged between April 10th and April 24th. They discharged on three days, April 21, 22, 23 and 24, or between those dates?

A. There is.

Q. By the way, Mr. Powers, upon what barge was

(Testimony of Edward Powers.)

that last quantity [784—726] of coal laden, on April 10th? A. On the “Melrose.”

Q. Look at April 24th; does it show a still further discharge of coal? A. It does.

Q. Into what barge? A. The “Melrose.”

Q. What quantity? A. 1042 tons, 1125 lbs.

Q. Now, look at May 21st; it shows the discharge that took place from May 18th to May 21st, into the barge “Theobold”—have you got that entry?

A. I have it.

Q. What quantity of coal was between May 18th and May 21st discharged from the “Algoa” into the “Theobold”?

A. If this is the correct total it is 1078 tons, 495 lbs.

Q. Is that 495 or 475?

A. I believe it is 495—yes, it is 495.

Q. Now, look at May 24th. The total shows the discharge between May 21st and May 24th does it not, from the “Algoa,” and upon the barge “Melrose”? A. It does.

Q. And what is the quantity of coal?

A. 705 tons, 1170 lbs.

Q. Now, look at June 8th, into the barge “Theobold”; have you that entry? A. I have it.

Q. Does that show the quantity of coal discharged from the “Algoa” from that barge between June 4th and June 8th, 1909? I would like the record to show, if your Honor please, that I am wrong as to the year. The witness is correct as to the 18 months. These figures occur in 1909, so that the coal was finally discharged in about 18 months. I am refer-

(Testimony of Edward Powers.)

ring you now to June 8th, to the barge "Theobold."

A. It shows here that the barge "Theobold" was loaded full 1078 tons, 495 lbs. on the 4th of June. That shows that they were [785—727] working on the outside on the 8th of June.

Q. It shows what?

A. It shows where she began discharging.

Mr. ROCHE.—The witness has just explained to me that the former balance was carried forward, 1078 tons, 495 lbs.

Q. Just explain that, Mr. Powers.

A. The barge had not been completely unloaded and therefore we carried the barge right on, the loading of the barge and the discharging of the barge, we carried that right on until the barge was fully discharged. Previous to June 8th the barge had discharged into the "Peru" 1028 tons and that left a balance of the difference between 1028 and 1078, and therefore we had to continue that barge and carry her along with us.

Q. Look under the figures you have there and see if there was not 924 tons, 972 lbs. laden on the barge from the "Algoa" in addition to the figures you have already given us.

A. That is correct.

Q. Look at June 12th, the barge "Melrose"; from June 9th to June 12th, the entries appearing on the 12th giving the total, is it not a fact that there was an additional quantity of coal laden upon the "Melrose" from the "Algoa" of 880 tons, 1915 lbs.?

A. There was.

Q. Look at June 23, the barge "Theobold"; have

(Testimony of Edward Powers.)

you got that? A. Yes, sir.

Q. Between the 19th and the 23d there was laden on the barge "Theobold" from the steamship "Algoa" 906 tons, 297 lbs.; is that correct?

A. That is correct.

Q. Look at June 30, barge "Melrose." A. I see.

Q. Between June 19 and June 30, there was laden upon the "Melrose," [786—728] from the steamship "Algoa," 1080 tons, 416 pounds; is that correct?

A. That is.

Q. Look on the same day, June 30, the barge "Rough and Ready." A. Yes.

Q. It is a fact, is it not, that on that date there was discharged from the steamship "Algoa" into the "Rough and Ready" 157 tons, 1486 pounds?

A. Yes.

Q. Now, turn back to June 29, the schooner "Shasta." A. Yes.

Q. Is it not a fact that there was discharged into the schooner "Shasta" 201 tons, 495 pounds?

A. Yes.

Q. Now, does the record, there, show the total quantity of coal discharged from the steamship "Algoa" and whether there was an overage or a shortage, according to the ascertained weight, that is, the weight on which duties were paid, and which was the quantity of cargo laden into the "Algoa"?

A. Not to my recollection. I don't remember.

Q. Is it shown in the handwriting of the defendant, Mills?

A. I will look it up. Maybe I can find it. I did

(Testimony of Edward Powers.)

not give the entire total of the figures. Mr. Mills made that entry after the "Algoa," 6 P. M.

Q. The words following, "Algoa," appearing under date of Wednesday, the 30th of June, 1909; is that correct? A. That is Mr. Mills' handwriting.

Q. At 6 P. M. is in the handwriting of the defendant, Mills? A. Yes.

Q. That is correct? A. Yes.

Q. And the last two entries that have been given by you to me? A. That is my handwriting.

Q. The last entries are in your handwriting?

A. All the rest of those entries are in my handwriting. [787—729]

Q. Those two entries to which you have last referred, are all in your handwriting? A. Yes.

Q. And represent the weight of the coal discharged from the steamship "Algoa," and laden into these barges as reported to you by the weigher? A. Yes.

Mr. ROCHE.—Now, will you admit, subject to correction, what the addition is, when I give you the total?

Mr. KNIGHT.—What is the total?

Mr. ROCHE.—The total which I have is 8,535 tons, 657 pounds, but there is a mistake of 20 pounds; it ought to be, assuming that the figure "9" is correct, instead of "7," 677 pounds.

Mr. KNIGHT.—We make it 8,145.

Mr. ROCHE.—This includes the discharge on June 3, and August 26, 1908; the total is 8,535 tons, 657 pounds.

Mr. McCUTCHEN.—Subject to correction, that will be admitted.

(Testimony of Edward Powers.)

Mr. ROCHE.—Subject to correction, may it please the Court, it is admitted that the out-turn weight from the steamship “Algoa” is 8,535 tons 657—that ought to be 677 pounds, with that corrected figure, and an overage of 116 tons, and with the corrected 20 pounds, it would be 804 pounds; that is after the coal was in there about a year and a half.

(Witness continuing.) I did not see any evaporation in that cargo during that time. I know nothing about that. I did not see it. When the coal thus discharged from the “Algoa” into the barges was again weighed out of the barges and into the vessels for fuel purposes, there was an overage from a barge in every instance. I cannot testify as to the quantity of overage without reading from the book. I finally left the services of the Western Fuel Company during [788—730] the month July, 1911. I have not worked for that company since.

Cross-examination by Mr. STANLEY MOORE.

I testified that I went to work as a timekeeper in the trimming for Mr. Mills and my father about twelve years ago. I have been away from San Francisco on two different occasions, once during the time that I was working down there as dumper before my brother came there.

Q. Well, about how long, as nearly as you can remember, prior to the time that your brother came down there, had you, yourself, been down there working as a timekeeper in connection with the trimming of coal?

A. On some of the ships, the Spreckels boats, I was

(Testimony of Edward Powers.)

there at the same time he was there.

(Witness continuing.) He might have been keeping time, and I was watching the chute, or going over the bunkers, weeding out the men, or I might have been keeping time for them when they checked off. It was not exactly a timekeeper's job; we had other work, such as watching the coal go down the chute, there—he was there at the same time I was there. I do not remember how long I had been down there before my brother came down there. I am 29 years of age, and my brother is, I think, about 25 or 26. Mr. Mills had the contracts in regard to the coaling of these vessels at the time when I was working as timekeeper in connection with trimming the coal. The Western Fuel Company had the contracts for the actual furnishing of the coal. John Rosenfeld's Sons preceded the Western Fuel Company. The majority of the coal loaded into the Spreckels boats was loaded from inshore on the track, from the company's own bunkers, that is, the Spreckels Company's own bunkers. The other vessels were [789—731] loaded from barges. I remember the "Ludlow," the "Corsair" and the "Nanaimo" as barges then in use, and there was one other, the name of which I have forgotten. The "Corsair" has since been condemned. The "Ludlow" is to-day abandoned. I do not remember whether I myself worked for the Rosenfelds or not. I think I was dumping coal on the barge when the Rosenfelds was there. The man who was engaged in dumping the coal had to be up in the frame work over the hold. He might

(Testimony of Edward Powers.)

be 10 or 12 feet, or 35 or 40, according to the height of the ship, but the majority of the discharges were low, about ten or twelve feet. On the "Theobold" a man still has to assist in the tripping of the buckets; but with respect to the other barges, the buckets are now automatically tripped.

I was first a dumper, then a hatch-tender, and then a foreman of the barge. The hatch-tender is the man who is highest in authority upon a particular barge. I don't know how long I was hatch-tender. We used to run extra gangs of men when there was a pressure of work. I used to be hatch-tender for the extra gang. We very seldom, however, used more than the two regular gangs. I don't remember when it was that I became [790—731½] a regular hatch-tender.

The speed with which the buckets go up depends, as I have heretofore testified, on a variety of circumstances, among others, the height to which the buckets are hoisted, the ability of the men in the hold, and on the engineer. Most of the ships require only a low hoist. The "Manchuria" and the "Mongolia" are up high, and the buckets would have to go, I should judge, about 25 or 50 feet to get up to the tripping place. The speed with which the buckets go up, depends, as I have said, upon the engineer. If he is nervy, he brings the buckets up and lets them down as fast as he can. The hatch-tender gives the signal for the bucket to start. It is pulled slowly until it gets clear of the barge; then he gives another whistle, and the bucket comes a good deal faster. The

(Testimony of Edward Powers.)

speed with which the buckets go up also depends upon the condition that a particular bunker may be in, that is, on whether the bunker is comparatively empty or comparatively full, for instance. When you commence a bunker the work goes very fast, but toward the end it goes slower. On the "Melrose," which has an automatic discharge, you can hoist about three tubs to two minutes. The hatch-tender and the different gangs do not work at the same rate of speed. Some are faster than others, just as one man may talk faster than another, and it also depends upon the engineer and sometimes the weigher.

BE IT REMEMBERED that thereupon the following testimony was given and that the following proceedings occurred:

Q. Now, when a weight is to be taken, you testified, as I understood you, that more time is allowed, the men have more time to fill those tubs; is that correct?
[791—732]

A. They have. Still, when it is going slow, you are discharging on to a ship that is taking it very slow, they have lots of time, too; sometimes as much as ten or fifteen minutes.

Q. But we are speaking, now, of the conditions not at the very close of the filling of the bunker, or toward the end, where everything is in the clear, so to speak, and the buckets are going up like three in two minutes. Under those conditions, as I understood your testimony, in answer to Mr. Roche, the men have no more time when a round of weights is called for, with

(Testimony of Edward Powers.)

respect to the filling of the buckets, than they do under those other conditions that the buckets are going up every two-thirds of a minute, or something of that kind? A. Yes.

Q. Now, what do you call that proposition, what is the term for it? A. For what?

Q. The scientific term, if you can call it such, for this proposition of meeting that cable that comes down. A. Meeting the hook.

Q. That is called meeting the hook, is it?

A. Yes.

Q. The matter of meeting the hook is something that keeps the men going at full speed, or at speed all the while, is it, while the buckets are coming up?

A. For instance, the tub is lowered, and the men, they alternate from one side to the other, he unhooks it and throws it over and the other man has to be there to meet it.

Q. But when these buckets are to be weighed, four of them in a round, there is a little more time in the nature of the work in which to fill up these buckets, according to your testimony?

A. There is. [792—733]

Q. Now, who is it calls for the weights, or determines when buckets are to be weighed?

A. Well, the weigher.

Q. That is, the custom-house weigher, the representative of the Government that you refer to?

A. I do.

Q. And you say that he says, "Put her on the scales," or "On the scales"?

(Testimony of Edward Powers.)

A. Something like that.

Q. And that is all that you ever heard said?

A. By the customs weigher, yes.

Q. What does the hatch-tender say?

A. He hollers down, "Pat," or "Mike," or whoever it is, to come up on deck.

Q. Pat or Mike? A. Or Tony, or anyone.

Q. Whatever his name may be, it has got to be somebody, has it not, on board these barges, and under most of the conditions? A. Yes.

Q. And those scales upon those barges, as I understood your testimony, are of two varieties; there is on some of them what you term a hanging scale, and upon others what you speak of as a platform scale, is there not? A. Yes.

Q. Well, now, if that piece of carpet, there, which is directly in front of you, should be considered as the hatch, and the hatch is longer across the barge than it is lengthwise, of the barge, isn't it?

A. Yes.

Q. Well, say this is the bow of the barge, and that is the stern of the barge, and this is the hatchway.

A. Yes.

Q. And this where I am standing is the deck of the barge? [793—734] A. Yes.

Q. Whereabouts would this hanging scale be located that you have referred to, with reference to the hatch, that carpet, as I say, being taken as the hatch?

A. Well, on the "Nanaimo" and "Comanche" it would be hanging from one corner of the hatch—

(Testimony of Edward Powers.)

Q. (Intg.) Well, then—

A. (Continuing.) Swinging out about a foot from the hatch,—not the hatch, but swinging out a foot from the side.

Q. And which side would that be, with respect to the side of the hatch that was nearest to the ship, if there is any connection in regard to that?

A. On the “Nanaimo,” it would be nearest the ship, and on the “Comanche” it would be offshore, away from the ship.

Q. If the ship was lying here, on one of these barges, it would be hung over this corner of the hatchway, would it not?

A. Yes, that is the offshore, the “Comanche,” yes.

Q. When he gets Bill, or Mike, or Tony, or whatever his name may be, on deck, what is done then?

A. Well, not in this case, they don't call them; they call them upon the “Theobald,” and these barges, the “Melrose” and “Ruth,” on the platform scales.

Q. Is it only with respect to the platform scales that the men are sent up? A. Yes.

Q. Whereabouts is the platform scales located with respect to the hatch?

A. It is right on the outside of the hatch, offshore.

Q. If that would be the end of the hatch, then it would be there on the deck of the barge?

A. A little away, and then they move it to the center. [794—735]

Q. They move it to the center of the space at the end of the hatch?

A. It is right in the middle of the hatch.

(Testimony of Edward Powers.)

Q. But it rests on the flooring, does it not?

A. It rests on the deck of the barge.

Q. Now, how do they get the buckets to the platform of the scales?

A. Well, he yells to the engineer "On the scales," and the engineer comes ahead slowly until they reach the level of the scales, the platform of the scales, and he draws the tub toward him, and lets it go back again, and when it comes back again so that the men can get it, they grab the tail, that is a rope on each side of the tub—and put it on the scales, and at the same time the hatch-tender is pulling on the rope.

Q. In other words, when the engineer gets that tub swinging on the end of the cable out from the hatch, then they grab hold of the tails, as you call them, and swing the thing back and forward, until it gets swinging, and comes clear over to where the platform scale is, and then they land it upon the scales? A. Yes.

Q. That is the object and the purpose of calling up Mike, or whatever his name may be, from the bottom of the hold below? A. Yes.

Q. Now, what, if anything, has the custom weigher the right to do or say with respect to the amount of coal that may be in any particular bucket when he calls for a weight? A. He can refuse to take it.

Q. He can refuse to take it? A. Yes.

Q. In other words, if it is overflowing with coal, or represents more than an average of the buckets that are passing up between [795—736] times, he has the right to refuse to take it, or ask that the coal be shoveled off until there is only left on it such coal

(Testimony of Edward Powers.)

as represents the average of the buckets that have passed up between times?

A. He could do that.

Q. Haven't you seen that? A. Once or twice.

Q. Haven't you seen them do that on barges that you were connected with, Mr. Powers?

A. I have seen them do that.

Q. Now, so far as their putting more coal in these buckets is concerned, the stevedores putting more coal into buckets is concerned, at the time the weights are called for, than at other times, have you ever told the stevedores to do anything of that kind?

A. I have not.

Q. Has anybody ever asked you at any time, Mr. Powers, while you were in the employ of the Western Fuel Company, while you were a hatchtender, or while you were an assistant superintendent, has anybody ever asked you or instructed you to tell the stevedores to do anything of that kind, that is to say, to put more coal into the buckets when a weight was to be taken than when they were going up without weight being taken?

A. Not that I remember of.

Y. Not that you remember of. A. No.

Q. Don't you think that if anybody had ever said anything of that kind to you, that you would recall it? A. I think so.

Q. And do you remember now of any occasion as long as you were connected with that company when anything of that kind was ever said to you?

A. I was never told to tell them to underload the tubs, no. [798—737]

(Testimony of Edward Powers.)

Q. Were you ever told to tell them to overload the tubs at any time when a weight was to be taken?

A. I was never told to.

Q. Is it not a fact, Mr. Powers, that Mr. Mills used to say, whenever any of these matters would come up, or complaints come up, that he did not want any trouble over there, or not to have any trouble over there?

A. He would say not to have any trouble over there—yes, he said that.

Q. And is it not a fact that you heard him say to the hatch-tenders and to yourself to keep the tubs even?

A. Yes, sir, when the custom-house weighers were standing there, yes, sir.

Q. You do recall him saying that in the presence of the custom-house weighers, do you not? A. I do.

Q. And in what position with the company were you at that time, Mr. Powers?

A. I was assistant to Mr. Mills.

Q. When he would talk to you about not having any trouble over there, referring to trouble on the Mail Dock, was he not talking about the keeping of the tubs even, if that is the expression that is used?

A. Well, a complaint came in about one of the hatch-tenders. That is the reason it was said.

Q. A complaint came in about one of the hatch-tenders. A. Overloading the tubs, yes, sir.

Q. Do you recall from whom that complaint came in?

A. It came to me from several customs weighers.

(Testimony of Edward Powers.)

Q. It came to you from several customs weighers.

A. At several different times. [797—738]

Q. And you reported that complaint to Mr. Mills, did you not? A. I did.

Q. And it was in connection with that, that Mr. Mills stated to you that he did not want to have any trouble over there, was it not? A. It was.

Q. And do you remember when that was, Mr. Powers, or about when it was?

A. Yes, sir, I remember the time that the barge ran short close after that; that is how I remember it.

Q. Can you fix about the year that it was?

A. I guess about 3 or 4 years ago.

Q. And these hatch-tenders were under you at that time, were they not,—you were assistant superintendent then? A. Under both Mr. Mills and I, yes.

Q. And when these complaints came in to you from the customs weighers you reported them to Mr. Mills, did you not? A. I did.

Q. And it was in that connection that this conversation that you have testified to occurred.

A. It was.

Q. Do you remember at this time the name of the hatch-tender about whom the custom-house weighers had complained to you? A. Yes, Dan Pallas.

Q. He was one of the hatch-tenders that was working for the company at that time. A. He was.

Q. And what, if anything, did you say to the customs weighers at the time that they complained to you about Pallas?

A. Oh, I passed it off; I didn't say much to him.

(Testimony of Edward Powers.)

Q. Did you have any conversation with Pallas?

A. Well, I told Pallas not to have any trouble with the weighers.

Q. Did you not tell Pallas, Mr. Powers, to try to keep the tubs [798—739] even?

A. The remark I made to Pallas was to have no trouble with the customs weighers.

Q. There is an expression you use about keeping the tubs even, is there not? A. There is.

Q. What is the meaning or significance of that expression?

A. Well, I suppose it means to keep the tubs filled when going on the scales as when they were not being weighed.

Q. What you told Pallas was not to have any trouble with the weighers, was it? A. It was.

Q. And you made that statement to him before you reported the matter to Mr. Mills, did you?

A. I did.

Q. And did you also make it to him after you reported it to Mr. Mills?

A. I thought once was sufficient.

Q. You say you thought once was sufficient?

A. I did.

Q. Do you remember receiving any complaints in regard to Pallas after you told him not to have any trouble with the weighers?

A. I think we received more complaints, yes.

Q. Do you recall as to whether you spoke to him again about it, or spoke to Mr. Mills again about it?

A. I don't remember whether I reported it again, or not.

(Testimony of Edward Powers.)

Q. You don't remember that, do you, whether you reported it again, or not? A. No.

Q. You testified this morning in answer to Mr. Roche, that Mr. Mills said to you, "Well, the Government is doing the weighing," or something of that kind; do you recall that testimony? A. I do.

Q. And Mr. Roche said that that was the excuse that you gave and you said that that was a true excuse; do you remember that? [799—740]

A. Yes, and that was the truth, the custom-house was weighing it; I said the statement he made was true.

Q. They were weighing those tubs, were they not?

A. They were.

Q. So far as any discrepancy in the tubs is concerned, Mr. Powers, is it or is it not your opinion that it is due to that particular system of weighing that the Government itself through the custom-house follows, and not to any fault so far as the Western Fuel Company is concerned, or any of its employees.

Mr. ROCHE.—One moment. We object to the question as calling for the opinion of the witness.

The COURT.—The objection is sustained.

Mr. STANLEY MOORE.—We note an exception.

Q. To what do you attribute the fact, Mr. Powers, if it be a fact, that the tubs that are weighed have some more coal in them than the tubs which are not weighed?

A. Well, I attribute that to the fact that they have more time to put it in.

Q. Is it not a fact then that you would attribute it

(Testimony of Edward Powers.)

to that system of weighing down there?

Mr. ROCHE.—That question is *object* to, may it please the Court, as calling for the conclusion of the witness.

The COURT.—The objection is sustained.

Mr. STANLEY MOORE.—We note an exception.

Q. When a weighing is taken whereabouts is the first tub that is called for as a general rule at the time when the custom-house man hollers out “On the scales”?

A. It may be in the air or it may be in the process of being dumped or it may be in the hold of the barge.

Q. Often times the first tub is in the air, is it not? [800—741]

A. Oftentimes it is in the air, yes; not in the air coming up but in the air coming down.

Q. In the air coming down? A. Yes, sir.

Q. And all four of the tubs are not already filled at the time he may call for a weight, are they?

A. They are not; as I have already stated, one tub is filled ready to meet the hook.

Q. Then it may be at a time when the custom-house man calls for a weight and when the four tubs are weighed in succession—it might be that only one tub at that time is completely filled.

A. Well, there may be two; it is according to the kind of men you have there. The whole three of them may be filled if they are close to the hatch.

Q. At all events, Mr. Powers, what is the general state of affairs there at the time the custom-house

(Testimony of Edward Powers.)

man calls for a weight with regard to how many of the tubs are then full?

A. There is generally one full.

Q. There is generally one full, and there may be two full.

A. Yes, and there may be three full.

Q. Is it or is it not a fact then that one or two or even three sometimes of those tubs are in process of being filled when you call down for the man to come up or when the hatch-tender calls down below for the man to come up and this manœuvre is gone through with it with regard to putting the tub upon the scales? A. Yes.

Q. And while the custom-house weigher is taking that first weight some of those other tubs at least are still in the process of being filled? A. Yes, sir.

Q. And is that in part what you have reference to when you say that the stevedores then have more time with regard to the filling [801—742] of the tubs than when they are engaged in meeting the hook?

A. They certainly have more time, certainly.

Q. And if they keep on working throughout that time the natural result of that operation is, in your opinion, that there will be some more coal in those particular tubs as to which they have more time than would have been the case if there had only been the time allowed them on that tub which was necessary to enable the tub to take its turn in the meeting of the hook.

Mr. ROCHE.—We object to that question upon

(Testimony of Edward Powers.)

the ground that it calls for the conclusion of the witness.

The COURT.—That is the same thing that you have proved yourself, that when they have more time down there they put more coal in.

Mr. ROCHE.—I think that is quite obvious if the Court please, if the man continues his work, if he continues to work.

The COURT.—It is only putting it in another form; it is another one of those instances of putting it in other words.

Mr. STANLEY MOORE.—Q. Well, how many different times, Mr. Powers, have you heard Mr. Mills say that he did not want any trouble over there, over there at the Mail Dock?

Mr. ROCHE.—That question is objected to upon the ground that it assumes something that the witness has not testified to. The trouble that the witness referred to was trouble with the customs weighers.

The COURT.—I suppose that is what counsel refers to also.

Mr. STANLEY MOORE.—Yes, your Honor, that is it.

Mr. ROCHE.—But that is not the question.

Mr. STANLEY MOORE.—It may be a distinction without a difference. The objection I think is very finely spun anyway. He said this morning that Mr. Mills said he did not want any trouble. [802—743] over there, and in speaking of it this afternoon he added the words “with custom weighers.” I will ask him this question:

(Testimony of Edward Powers.)

Q. Do you remember more than once Mr. Mills saying he did not want any trouble over there, or with the customs weighers, or whatever it was he did say?

A. Whenever the customs weighers started in kicking or started in objecting to the way they were loading the tubs and I told Mr. Mills about it he would tell me not to have any trouble over there.

Q. And how often would that be?

A. Whenever they would watch them close enough.

Q. I beg your pardon,—what is that?

A. I say whenever they would catch them doing it?

Q. How often would that be?

A. I have had complaints from different weighers over there, several different weighers.

Q. You were assistant superintendent, Mr. Powers, for a matter of four years; do you recall how often you reported things like that to Mr. Mills and he would say to you he did not want any trouble over there?

A. Quite a few times; I do not remember the exact number of times.

Q. I know—and you could not be expected to remember the exact number of times, but do you remember whether or not Mr. Mills has said that half a dozen different times?

A. He said that quite often, and he also said that the weighers were cranky, and they had something or there was something the matter with the weighers;

(Testimony of Edward Powers.)

he made that remark, he said they would kick at anything.

Q. Well, whether they were cranky, or not, or they would kick at anything, or not, he used to say he did not want to have any trouble over there? [803—744]

A. He said that several times, yes, sir.

Q. Do you know whether he said it half a dozen times?

A. I don't remember whether he said it half a dozen times or whether he said it 12 times or three times.

Q. You cannot remember?

A. I cannot remember, no.

Q. And when you would report these matters to him, he would say that, would he not?

A. He said that several times when I reported the matter to him, yes, sir.

Q. Whether the customs weighers were cranky, or not, they had the absolute right, as you understood it, to say how that weighing should be proceeded with, did they not?

A. So I understood, yes, sir.

Q. And is it or is it not the fact that whatever the customs weighers said with regard to weighing, the employees were supposed to comply with it?

A. They were supposed not to have any trouble with them.

Q. And if a custom-house weigher claimed that he would not take a certain bucket or tub for weighing, it had to go on up into the ship without being

(Testimony of Edward Powers.)

weighed, did it not? A. Yes, sir.

Q. And if a custom-house weigher claimed that certain other buckets represented more of an average of the buckets that were coming up they would be weighed instead of the ones that had first been offered, would they not? A. They would.

(Witness continuing.) Generally, when we were discharging barges at night, electric lights were supplied by the steamship company, that would throw the light into the hold of the barge. There were also the box lanterns belonging to the Western Fuel Company. [804—745] The electric cluster was arranged as the hatch-tender or the custom-house weigher wished it to be. Usually that was in such a way that it would throw the light down into the hold of the barge. I would put one of the box lanterns in each wing of the barge where the men would be working, and also one in the hoist so that the engineer could see on each trip the proper time for dumping the tub. The light sometimes went out. In such event they went on the work just the same so long as the box lanterns were lit. If a man were standing right at the hatch of the barge, he could thus, with all the lights going, see how the tubs were loaded as they ascended.

Q. When a barge starts to unload they make for what they call the skin of the barge, to get the skin, do they not?

A. That is the bottom of the barge, yes, sir.

Q. What does that mean? The barge when it comes alongside a ship may be full of coal clear up

(Testimony of Edward Powers.)

to the level of her decks and even above, may she not?

A. Some barges.

Q. In all of them the hold is full of coal?

A. It is.

Q. And they make to work down there to get to the floor of the barge, do they not?

A. To get to the 'tween-decks; there is a 'tween-deck in some of them.

Q. Well, anyhow, Mr. Powers, they make for a floor; they want a solid foundation from which to work, do they not? A. Yes, sir.

Q. And then they have what they call the brake, haven't they? A. The brake?

Q. When they get down clear to the floor of the barge there is a pile of coal going up on either side; say that is the hatch-way, [805—746] they get right down to the bottom of the barge, down to the floor there, don't they? A. Yes, sir.

Q. Then there is a solid wall of coal coming out on either side on a slant, is there not? A. There is.

Q. And each one of these buckets is set upon wheels, is it not? A. It is.

Q. And if this is the floor of the barge, and there is a bank of coal, after they have gotten to the skin, as you call it, they wheel the bucket over and tilt it at the same time so that it slants head in to that pile of coal, do they not? A. Sometimes.

Q. When that point is reached, Mr. Powers, is not that what they call the brake?

A. That is when they have the run of coal. At times they lift the coal from the deck.

(Testimony of Edward Powers.)

Q. What do you mean by that?

A. When the drop of coal is gone naturally they must lift it from the deck.

Q. But when they have that floor they work either way, do they not; that is to say, they work backward toward the stern of the barge and they work this way toward the bow of the barge?

A. And sometimes into the wing of the barge until they clear the hatch.

Q. In other words, Mr. Powers, they work clear across the barge until they clear that hatch and the floor that is directly beneath the hatch, do they not?

A. They do.

Q. And they obtain a clear working space within which to move about those four buckets that are set on wheels, consisting of the entire flooring of the barge itself that corresponds with the opening that is formed by the hatch?

A. After they dig down into the barge and clear the 'tween-decks they do, yes, sir. The 'tween-decks contain about 120 or 130 [806—747] tons of coal on some of the barges, the "Melrose" especially.

Q. Then when they have got down there the great majority of the coal is still on board the barge, is it not, that is, consisting of the part that goes clear back to the stern of the boat and also the part that goes clear forward to the bow?

A. There is about two-thirds of it left, yes, sir.

Q. And then the flooring they have cleared away beneath the hatch, they run the buckets around on the wheels there and tilt them against the bank of

(Testimony of Edward Powers.)

coal on either side, do they not?

A. At times they do and at times they pick it from the floor, shovel it from the deck.

Q. I know, but when they get that clear down to the floor of the barge itself to the 'tween-decks, if there is a 'tween-decks on a particular barge, and get that space cleared off right down to the bottom of the barge, that is, within the confines of the hatchway, what is the usual method of procedure with respect to the filling of the buckets?

A. They do what they call scooping two tubs by turning the mouth of the bucket in toward the pile of coal and scooping it in and then straightening it up and shoveling in about 20 shovels full, 10 or 20 shovels full, and then they keep on doing that. If they keep scooping the coal down they have the run of it down and then they have to shovel the tub full then so that they can get in and have another run or a brake, as you call it.

Q. Do they only scoop a couple of tubs and then after that is it all shoveled full?

A. They scoop two or three tubs and then shovel a tub.

Q. And then what do they do?

A. And then they scoop again and then shovel again.

Q. And then scoop again and shovel again, and so on; is that it? A. Yes, sir.

Q. And generally two buckets are working back toward the stern and two are working toward the bow, are they not? A. Yes, sir.

Q. And that is the position they are generally in,

(Testimony of Edward Powers.)

or at least three of them might be in, when a weight is called for by the custom-house weigher?

A. It is.

Q. The men keep on shovelling, do they not, just where the bucket might happen to be?

A. Until it is filled, yes, sir.

Q. How much does a shovel full of coal weigh, according to your opinion, I mean the shovels that were used on that work; just give us an offhand opinion.

A. 10 or 15 lbs.

Q. If there was even a couple of shovels full put into a bucket that was to be weighed more than had been put into a bucket that was not to be weighed, a considerable difference would be made with respect to the out-turn weight of the entire barge, would it not?

A. It would if it was a shovel full of lumps. They may pick up a large lump and place it on it.

Q. Even a single lump that may be put in a bucket in addition to the amount of coal in a bucket that was to meet the hook would make a considerable difference in the eventual out-turn of the barge, would it not? A. It would make some difference, yes, sir.

(Witness continuing). I was never employed on the bunkers by the Western Fuel Company. Occasionally, however, I went to the offshore bunkers with the barges when they went there to be loaded. I would be [808—749] aboard the barges, which would be accompanied by one or more of the barge men, who would make her fast and handle the lines. When I answered “No” yesterday to the question

(Testimony of Edward Powers.)

whether I upon occasions remained with the barge when it would be taken over to the offshore bunkers of the Western Fuel Company for the purpose of being coaled, I was mistaken. I had forgotten. Last night on thinking the matter over I came to the conclusion that I had occasionally gone over with the barges to the offshore bunkers when they went there for the purpose of being loaded. I don't remember whether or not I testified yesterday that I had been on top of the bunkers while the barges were loading, but that I did not remain there until they were finished. That is the fact, however. So far as the weights that went into the barges were concerned, I secured them only at such exceptional times as Mr. Mills would be away on his vacation, or on occasions when I happened to be on the track and Mayer would ask me to take the weights down to Mr. Mills. This would not happen very frequently. My work with Mr. Mills was to do what I was told. In answer to the question whether as assistant superintendent my work was concerned with the unloading of these barges, I would say that my work was to do as I was told. He sent me on top of the bunkers to look after things; he sent me on the barges and on the wharves and to get trimmers. I was not employed to do any particular work on top of the bunkers, but still, if Mr. Mills asked me to do anything there I would do it. I have been up on the bunkers quite often. I did not ordinarily have anything to do with the putting of coal in the barges. The bulk of my work consisted in unloading the barges, or shifting the barges

(Testimony of Edward Powers.)

about from ship to ship. I had, under the direction of F. C. Mills, charge of the barges the crews of the barges and the hatch-tenders while I was assistant [809—750] superintendent. I never shifted a barge or put her alongside a ship, however, without Mr. Mills's orders to do so; or, in the absence of Mr. Mills, without the order of Mr. J. B. Smith. I gave the orders to the hatch-tenders or to the foreman of the barges. I would go out to the Mail Dock or in the stream, or wherever the barges might be working, more often than Mr. Mills, but Mr. Mills was there twice a day or sometimes more. I was a regular or steady hatch-tender working upon different barges. I cannot remember exactly how long it was that I had the steady gang, that is, the second gang, on the barges. I was only handling the third gang when I became assistant superintendent. I think it was about a year that I was hatch-tender of one of the regular gangs; it might be more, and it might be less. That year was, I think, from seven to nine years ago. I can't remember what particular year. Maybe I was a regular hatch-tender a little more than a year. I cannot say how many years I had had something to do off and on with the unloading of barges. I think it was several years. I cannot remember when I first commenced to tend hatch. I have already answered the question to that effect. I cannot remember how long after the Rosenfelds were gone it was that I first commenced to tend hatch. I do not think I ever tended hatch while the Rosenfelds were there. I cannot remember when I first

(Testimony of Edward Powers.)

commenced tending hatch for the Western Fuel Company.

Q. Now, then, do you mean to be understood as testifying to this Court and jury that there was any wrongful action on the part of those stevedores in the filling of those buckets or in the loading of those buckets that were hoisted during the discharge of those barges?

* * * * *

A. I do.

Q. And what is it? [810—751]

A. Well, for the reason the report was rendered F. C. Mills and J. B. Smith every day stating that the barges had overrun, sometimes as high as 10, 20 and 30 and as high as 35 per cent, over what was loaded into the barges; therefore it showed conclusively that it was fraudulent, didn't it?

Q. I am questioning you, Mr. Witness. I am asking you what you saw there. Did you see anything down there, either during the time that you were acting as hatch-tender yourself or afterwards during the time that you were acting as assistant to the superintendent, leaving aside the Mills' books—perhaps they will be come to later—and confining you now to what you saw down there, what you observed, what did you see down there that you claim was wrongful action on the part of those stevedores?

A. I have already testified to the tubs, when they were weighed they were overloaded.

Q. Did you see them doing that?

A. Well, I seen them when I was standing on the

(Testimony of Edward Powers.)

deck of the barge, and the tubs was going up, and when they were in the process of being dumped, and there was not as much put in them as when they were put on the scales. And Mr. F. C. Mills standing on the deck saw it with me.

Q. Do you claim that they were overloaded intentionally and deliberately, by those stevedores?

A. In some cases, yes.

Q. Was that true, Mr. Powers, while you were acting as hatch-tender there? A. It was.

Q. And how many cases did you observe of that kind during the time that you were employed as a hatch-tender for this company?

A. Numerous times.

Q. Numerous times. Did you ever tell the stevedores to do that? [811—752]

A. I told them to fill the tubs up, to keep them well filled.

Q. You told them to fill the tubs up and keep them well filled, did you not? A. I did.

Q. You have told them that time and time again, have you not? A. I told them quite often.

Q. And hasn't Mr. Mills told you to tell these stevedores to fill the tubs up and to keep them filled up, and well filled?

A. Mr. Mills has not told me to fill the tubs up and keep them well filled. On the transport dock, Mr. Mills told me to underload the tubs—on the transport dock, not on the Pacific Mail Dock.

Q. Well, did you tell the stevedores, then, of your own volition, and without suggestion from him, to

(Testimony of Edward Powers.)

keep the tubs filled, and to keep them well filled?

A. I told them to put coal in the tubs when they went on the scales, plenty of coal.

Q. You said to them, Mr. Powers, to fill the tubs and to keep them filled, and not only to keep them filled, but to keep them well filled?

A. On the Pacific Mail Dock, when the weighers objected to the method, Pallas and some more had of weighing the tubs, I did, but I am speaking of the transports—Pallas and Wilson, the present hatch-tender—

Q. I am not talking about that.

Mr. ROCHE.—I submit, may it please the Court, that the witness has a right to give an answer to the question, and counsel has no right to interrupt him when he is saying something which evidently hurts the other side.

Mr. MOORE.—This witness testified yesterday that he never had said anything one way or the other about the stevedores— [812—753]

The WITNESS.—On the Mail Dock.

Mr. MOORE.—(Continuing.) Or the hatch-tenders, either about keeping the tubs even, or keeping them filled, and now he admits that he did tell them that and told them that frequently.

The WITNESS.—I said on the Mail Dock, when the customs weighers objected. I am speaking of on the transports at the present time. The fact, the hatch-tenders that were then there and are now there, Dan Pallas and Frank Wilson, were in the employ of F. C. Mills before I took that position, and un-

(Testimony of Edward Powers.)

doubtedly they had received their instructions the same as I, from F. C. Mills.

Q. We are examining you now, Mr. Powers, about your testimony yesterday, in regard to the Mail Dock. Now, you are trying to get in something else, and perhaps we will get around to that.

A. Will you specify it as to the Mail Dock, and I will answer according to what you ask?

Q. Yes. You were talking about the Mail Dock yesterday, were you not? A. I was.

Q. I am talking about the Mail Dock now. Did you or not testify yesterday that all you had said to the crew down there, or the hatch-tender, was not to have any trouble with the weighers? A. I did.

Q. And did you not testify that is all I said, not to have any trouble with the weighers?

A. I did, on the Mail Dock, but once or twice Mr. Mills—I told the weighers, under instructions of Mr. Mills, he says “Those barges are running kind of short.” I told the hatch-men, I said, “Dan,” or “Frank,” or whoever it might be, “These barges are running a little short; don’t let that occur again.” I never told them to overload them, but I told them that. [813—754]

Q. Did you or not testify yesterday that all you had told the hatch-tender down there was not to have any trouble with the weighers? A. I did.

Mr. ROCHE.—Just one moment. That question is objected to on the ground that the evidence speaks for itself.

Mr. MOORE.—It does not matter if it does.

(Testimony of Edward Powers.)

The WITNESS.—What is the question?

(Last question repeated by the reporter.)

A. I did.

Q. Now, then, didn't you testify yesterday that that was all you said?

A. That is all I remembered yesterday, yes; I remember that now.

Q. Well, didn't I ask you yesterday if you said anything to them about keeping the tubs even?

A. You did.

Q. Did you remember then that you had told the people down there at the Mail Dock to fill the tubs and to keep them well filled?

A. I didn't tell them that; I didn't answer that yesterday; I didn't answer in that way. I think I said nothing concerning the tubs, or the answer I just made that I told them the barges were running short, and don't let it occur again.

Q. Haven't you testified here, within the past fifteen minutes, that you told them down there at the Mail Dock to keep the tubs filled, to fill the tubs and to keep them well filled?

A. No, I did not tell them that. I told them not to have trouble with the weighers.

Q. I am asking you not what you did or did not tell them, Mr. Powers, but didn't you testify here, within the past fifteen minutes, that you had told them down there at the dock to fill the tubs and to keep them well filled?

A. I might have told them when the custom weigher was standing [814—755] there, and mak-

(Testimony of Edward Powers.)

ing objections to the loading of them.

Q. Didn't you testify here not fifteen minutes ago that you had told them that down there time and again? A. I did not say time and again, no.

Q. Didn't you say that you had told them that down there a number of times, or many times?

A. I might have told them a number of times; I told them whenever the weigher kicked, which was quite frequently.

Q. Did you not remember that you had told them that down there, whether it was whenever the weighers kicked, or whether frequently or not—did you remember down there at the Mail Dock you had said to the hatch-tender, or to the crew, to fill the tubs and to keep them well filled—did you remember that when I was asking you the questions?

A. I told them not to have trouble with the weigher; that is the same as telling them to fill the tubs and keeping them well filled.

Q. Whether it was the same or not, didn't you undertake to testify yesterday that those words you used, "I told him not to have trouble with the weigher, and that is all that I said"? A. I did.

Q. Were you not asked yesterday as to whether you had said anything in regard to keeping the tubs even or not? A. I may have.

Q. Now, were you not asked yesterday as to whether you had said anything to the stevedores about having the tubs filled when they were to be weighed, and later when they were not to be weighed—do you remember that?

(Testimony of Edward Powers.)

A. I had nothing to do with the stevedores; the hatch-tender had the stevedores; he was the foreman.

Q. But did you say it to the hatch-man? [815—756] A. Say what?

Q. That the tubs were to be filled fuller when they were to be weighed than when they were not to be weighed? A. No, I did not tell them that.

Q. You did not tell them that?

A. I did not tell the hatch-tender, no.

Q. Well, then, you said that either to the hatch-tender who was, so to speak, the foreman of the gang, or the stevedores, themselves; you said that to either one or the other, to fill the tubs up heavier when they were to be weighed?

A. No. I told them the barges were running short, they were not running to a large enough percentage to suit them.

Q. You told them not to let the barge run short again? A. I did.

Q. Well, how many times did you tell them to fill the tubs and keep them well filled?

A. Whenever the weigher kicked.

Q. Did you mean to testify to that this morning, that you had ever said that, or did it escape from you accidentally? A. Testify to what?

Q. That you had ever told them to fill the tubs, or to keep them well filled?

A. The hatch-tender, if the weigher was objecting very much, I might have told them to; I guess I did tell them to keep them well filled while the weigher was standing there.

(Testimony of Edward Powers.)

Q. The question is, did you intend to testify to that this morning, that you had told them that at any time? A. I did.

Q. Did you remember that, as a matter of fact, you had so stated to them—did you remember that yesterday at any time? [816—757] A. I did.

Q. Then why did you not testify to it?

A. I believe I stated that this morning.

Q. Why did you not testify to it when you were asked in regard to it yesterday?

A. To what? I don't know what you're speaking about. If you speak slowing I may understand you better.

Q. Very well; didn't you understand me yesterday?

A. What is the question? I will answer the question.

Q. The question is, when you were asked yesterday in regard to what you said to the hatch-tenders, why did you not testify to it?

A. I answered the question that you asked yesterday, didn't I?

Q. Now, just a minute. You asked me to speak slowly. Let me finish the question. I want to give you the question fully so that you will not misunderstand it. Why didn't you testify then that you told them to fill the tubs and keep them filled?

A. The question asked me yesterday was, did I tell the hatch-tenders to overload tubs or underload them, wasn't it?

Q. Yes, but didn't I ask you also what you said to

(Testimony of Edward Powers.)

the hatch-tenders when complaint came in?

A. I don't remember whether you did, or not.

Q. Don't you remember that I did, and don't you remember that you said to the hatch-tender not to have trouble with the weighers?

A. Yes, I remember that.

Q. And don't you remember whether I asked you whether that was all that was said, or not?

A. I don't remember that you asked me whether that was all, or not.

Q. And don't you remember answering loudly, yes, I told them not to have trouble with the weighers, that is all?

A. I told you I told them not to have trouble with the weighers, [817—758] but I don't remember making any other statement.

Q. You don't remember of saying that, and then saying, and that is all you did tell them?

A. No, because it was not.

Q. You said that the complaint had come in, or a complaint had come in, in connection with a hatch-tender by the name of Pallas, did you not, this Dan Pallas you speak about? A. I did.

Q. You recall testifying to that, do you?

A. I do; I said several complaints, not one.

Q. Well, you afterwards put in several, but at the time I am reading of now you said, "Well, a complaint came in about one of the hatch-tenders," and later on you said it was Dan Pallas. Do you remember at this time the name of the hatch-tender about whom the custom-house weighers had com-

(Testimony of Edward Powers.)

plained to you? A. Yes, Dan Pallas.

Q. And it was in connection with that you testified that Mr. Mills stated to you he did not want to have any trouble over there? A. It was." Is that correct, Mr. Powers? A. That is correct.

Q. And you were asked if you had any conversation with Pallas and you answered, "Well, I told Pallas not to have any trouble with the weighers." That was the answer you made as to what you had told Pallas, not to have any trouble with the weighers, was it? A. It was.

Q. And then you were asked this question, Mr. Powers, and you made this answer: "Q. Did you not tell Pallas, Mr. Powers, to try to keep the tubs even?

A. The remark I made to Pallas was to have no trouble with the customs weighers."

Do you remember that question and that answer?
[818—759]

Mr. ROCHE.—Now, if the Court please, I object to that question upon the ground that the testimony is entirely in accord and consistent with the evidence given by him this morning.

Mr. STANLEY MOORE.—Your Honor, please, we object to that objection.

The COURT.—And I suppose there is a counter objection to that. The objection is overruled. That does not mean your objection, Mr. Moore; the objection to the question is overruled.

A. I do. That was on one occasion. I may have stated the other on another occasion.

(Testimony of Edward Powers.)

Mr. STANLEY MOORE.—Well, we may come to that later. I want to read you a little more. “Q. There is an expression you use about keeping the tubs even, is there not? A. There is. Q. What is the meaning or significance of that expression? A. Well, I suppose it means to keep the tubs filled when going on the scales as well as when they are not being weighed.” Do you remember that answer?

A. I do.

Q. “Q. What you told Pallas was not to have any trouble with the weighers, was it not? A. It was.” Do you remember giving that testimony?

A. I do.

Q. Did it not come into your mind then, Mr. Powers, when you were asked about keeping the tubs even, which you yourself know means keeping them filled on the scales and off the scales while they are going up there on the side of the vessel, that you had stated to the hatch tender to fill the tubs and to keep them well filled?

A. I told him in the presence of the weigher to fill the tubs, [819—760] yes, sir.

Q. And did you tell him in the presence of the weigher to keep them well filled? A. I may have.

Q. You say you may have? A. Yes.

Q. If you did tell him that, to fill the tubs and to keep them well filled, it meant, so far as the meaning of the words themselves were concerned, at least, that the tubs should be kept even, did it not?

A. It was said for effect on the weigher, to satisfy him.

(Testimony of Edward Powers.)

Q. Well, without regard to that, Mr. Powers, and asking you to give your attention, please,—is not that the equivalent of saying to keep the tubs even?

A. Yes.

* * * * *

Mr. STANLEY MOORE.—Q. And when that question was asked you, about keeping the tubs even yesterday, you know what that expression meant, taking it on its face value, did you not? That it meant keeping them filled? A. I did.

Q. You testified that you had a conversation, did you not, at the office of Mr. McCutchen and Mr. Olney, at which I and Mr. Norcross were also present?

A. You were.

Q. What was that conversation?

A. Do you want me to start from the inception of Mr. Norcross asking me to go down there?

Q. Start with the conversation, so far as I am concerned, the conversation itself in the office, at which I and these gentlemen were present.

* * * * *

A. They told me that they were rather puzzled about the overages in the barges and asked me if there was any reason or excuse for it. [820—761] I told them there was a possibility. Then I went on to state that the barges, as I have already stated here—

Mr. STANLEY MOORE.—Q. (Intg.) Just give your own words.

A. (Continuing.) That the barges, when we were discharging them, when they were coming up—when

(Testimony of Edward Powers.)

the buckets were coming up without weighing them, there was not as much in them as when they went up on the scales. Then they asked me if the men benefited by that and I told them yes, that they benefited by it.

Q. Are you finished?

A. And Mr. McCutchen told me that if I was asked that question, to answer it, if the prosecution asked me the question to answer it.

Q. To answer what?

A. To answer to the truth, to answer the question; if they asked me if I had been up to McCutchen and Olney's office.

Q. Have you related all of the conversation so far as you can remember?

A. There is some more I cannot recollect just now. That was the main point.

Q. Have you now related to us the substance of the conversation? A. I have.

Q. Do you remember whether anyone said in the course of that conversation or at the beginning of it, that they wanted you to tell everything that you knew?

A. They did not. They asked me the reason for the overage of the barge. They did not ask me to tell everything I knew. It was concerning that that I went down there for, as David Norcross stated when he asked me to go down there.

Q. Do you remember Mr. Olney stating to you, in substance and [821—762] effect that he wanted you to tell everything that you knew down there?

(Testimony of Edward Powers.)

A. No, sir.

Q. To tell the whole business? A. No, sir.

Q. To tell all that you knew about the business of the company?

A. No, sir, he did not, so help me God! He never said it.

Q. Did he say that in substance or effect?

A. He did not.

Q. Did he use the expression, "I want you to tell the whole thing"?

A. He asked me concerning the barges and the overage, nothing about the bunkers or any other part of the work whatsoever.

Q. Did he say to you, "I want you to tell the whole thing"? A. He did not.

* * * * * * * *

Q. Did he say to you that he wanted you to tell everything you knew? A. He did not.

Q. Did he say to you that he wanted you to tell whether anything was wrong down there?

A. He may have asked that, I don't remember.

Q. Don't you recollect whether he did, or not?

A. No, I don't remember whether he did ask that, or not.

Q. Don't you recollect that he did say, "Now, if there is anything wrong down there I want you to tell us about it and tell us all about it"?

A. I don't think he did.

Q. Do you state positively, Mr. Powers, that he did not? A. I don't think he did.

Q. The question is, do you testify here, as a matter

(Testimony of Edward Powers.)

of fact, that he did not make that statement to you?

A. I said I don't remember him making it.

Q. And was not that right at the commencement of that conversation? [822—763]

A. I don't remember him making it.

Q. Don't you remember his saying to you, "Now, if there is anything that is wrong down there I want you to tell us about it"?

A. I don't remember him making that statement.

Q. Do you remember his saying to you, "Was there anything wrong down there, and if so, what was it"?

A. I answered the question you asked before; I said I don't remember his making that remark or statement.

Q. Do you remember him saying that the only thing was in regard to the loading of the barges and that was not really wrong?

A. He asked me about the barges, how they over-run, and I have already stated the answer I had given him.

Q. Do you remember saying the only thing was about the loading from the barges?

A. No, I don't remember that.

Q. Do you remember saying down there that when the buckets were going up without a weight being taken there was about three-quarters of a minute between buckets? A. I do.

Q. You remember saying that?

A. I remember saying that, yes, sir.

Q. What else do you remember saying in regard to the manner and the method of the loading and

(Testimony of Edward Powers.)

weighing and hoisting of the buckets?

A. I stated it took a minute or three-quarters of a minute to discharge a bucket without weighing it, and that it took from 3 to 4 minutes to weigh the buckets.

Q. You remember that, do you?

A. I remember that, yes, sir.

Q. And what, if anything, further did you say in connection with [823—764] those circumstances, that it took three-quarters of a minute for the buckets when they were going up and more time when the buckets were to be weighed?

A. You asked me if it benefited the shovelers in the hold, and I told you it did, that they had more time to fill tubs.

Q. You said they had more time to fill tubs?

A. I did.

Q. Do you remember having said anything else than that? A. Not that I recollect.

Q. Can you think a moment and see whether that is all that you said in regard to that subject?

A. I may have said more, I don't recollect just now.

Q. Well, don't you remember whether you did, or not, with respect to the filling of these tubs, or the weighing of these tubs, or the loading of them by the stevedores, or as to whether or not there was any wrong conduct in it?

A. I don't recollect that. I told you that when they went on the scales they were overloaded and

(Testimony of Edward Powers.)

when they went up without being weighed they were underloaded.

Q. Do you remember saying anything about the human element?

A. I said it may be human nature to take advantage of anything; for instance, the 3 or 4 minutes it took in weighing, and they were there to meet the hook.

Q. You do remember, do you not, that you said something about human nature and about meeting the hook? A. Yes, sir, I do.

Q. Did you forget that a moment ago when I asked you about it?

A. I am stating that I remember it now.

Q. But I say when I asked you the question a moment ago, did you forget about it then. [824—765]

A. It did not come to my mind; if it did I would have answered it.

Q. Well, what if anything, did you say in regard to the human nature element and in regard to taking advantage?

A. I said the men would shirk the work if they were not forced—that is to say, if someone was not standing over the hatch telling them to fill the buckets all the time, and if the hatch-tender was not always after them they would not fill the buckets. That is what I told you.

Q. You remember that, do you? A. I do.

Q. Do you remember as to whether or not you said there was anything wrong done down there?

(Testimony of Edward Powers.)

A. Not on the part of the shovelers.

Q. What did you say about that?

A. I said it was only human nature to make the work as light as possible, speaking of the shovelers in the hold.

Q. Then speaking of the shovelers in the hold, Mr. Powers, did you use any expression about whether there was anything wrong, did you use that word in regard to that?

A. I may have. I know there was nothing wrong with the shovelers.

Q. Without regard to what you may have used, Mr. Powers, don't you remember whether you did use that term?

A. What term is that?

Q. The word "wrongful."

A. I don't remember using it.

Q. You have no recollection either one way or the other with respect to that? A. No, sir.

Q. Have you testified to the whole of that conversation so far as you have any recollection concerning it? A. I have. [825—766]

Q. Do you recall now as to whether anything was said in the course of that conversation with reference to whether or not anybody had ever given any instructions to you or had ever asked you to do anything wrong?

A. You asked me—one of the gentlemen asked me if J. B. Smith ever told me to overload tubs or underload tubs, and they asked the same question about Mills; that question was asked.

(Testimony of Edward Powers.)

Q. And what did you say?

A. I said I received no instructions from them to overload or underload tubs.

Q. Do you recall as to whether or not a question was asked of you as to whether during that time that you were connected with that company, Mr. Mills or anyone else had ever asked you to do anything that was wrong? A. I do not.

Q. Do you testify now that no such question as that was asked of you?

A. Not that I remember, and I am pretty sure it was not asked me.

Q. Do you testify positively that that very question in substance and effect was not asked of you, and almost in those very words?

A. I have answered the question.

Q. Is your answer positive that it was not?

A. The answer to the question covered that.

Q. Well, does it cover it positively, or not, or are you undertaking to answer it simply, as you state, to the best of your recollection?

A. I answered to the best of my recollection in the answer.

* * * * *

Q. Mr. Powers, have you now related all of that conversation?

A. There may be more but not that I recollect of.

Q. Can you not think for a moment and see in your own mind [826—767] whether or not in fact there was more? A. I stated there may be more.

Q. Do you recollect now any more?

(Testimony of Edward Powers.)

A. I have stated I do not.

Q. Do you remember saying anything in regard to this system of weighing as a system of weighing?

A. Yes, sir, I did.

Q. Did you not remember that until I recalled it to you?

A. I did not; if I did I would have answered it.

Q. What, if anything, did you say in that regard?

* * * * *

A. I told you it was a very poor system and that that was party responsible—partially responsible—for these overages.

Mr. STANLEY MOORE.—Q. Was that all that you said about the system of weighing?

A. I believe so.

Q. And you say that you said it was a very poor system and that it was partially responsible for the overages; is that what you said? A. I did.

Q. Did you use the word “partially”?

A. I may have used the word “part,” part responsible.

Q. Did you use the word “part” or “partial” or some word of that same class or meaning?

A. I believe I did.

Q. How long have you remembered this last part of the conversation, the part that I am now questioning you about with respect to the system of weighing?

A. Just when you asked the question and prompted me I remembered it.

Q. It had gone out of your mind, had it, until I spoke to you about it just a moment ago in the ques-

(Testimony of Edward Powers.)

tion that I put to you? A. It had. [827—768]

Q. Does it come back into your mind clearly and distinctly that in speaking about that system of weighing, that there was a partial responsibility for the overage, and that you used the word “part” or “partial”? A. Yes, sir, it does.

Q. Are you able to testify now, with the recollection that has just come to you, positively and unequivocally that that word “part” or “partial” or some word of similar meaning or import was in fact used by you?

A. I am pretty sure it was, otherwise I would be very foolish to give the statement to you that 35 per cent overage was on account of that.

Q. Did you make that statement to me too?

A. No, I did not make that statement then, I am making the statement now that that percentage would be a very foolish statement to make.

Q. Well, I am not going to argue with you about that now. I am trying to find out what you stated down there, and without regard to these other matters that you are bringing up now. The question is, Mr. Powers, do you positively recall, so that there can be no mistake about it in your mind, that in connection with this system, of weighing and the responsibility for the overages, you used the word “part” or “partial” or some word similar in meaning?

A. I believe I did.

* * * * *

Mr. STANLEY MOORE.—Is it not a fact, Mr. Powers, and that you told us, that the system of

(Testimony of Edward Powers.)

weighing—the system of Government weighing down there was what was responsible? [828—769]

A. I said partly responsible, I believe. That is the answer you wanted, wasn't it?

Q. Didn't you say it was solely responsible, either in substance or effect? A. No.

Q. You say that that is the answer we wanted, did you not? A. Yes.

Q. Were you giving us the answers we wanted?

A. Yes, I gave you that answer; that was the answer you wanted. Norcross said that is the reason you wanted me down there, as an answer to that, and that is the reason I gave it to you.

Q. Were you giving such answers as we wanted? Is that the reason that was answered in that way?

A. I said that that was partly responsible, and that was very true.

Q. I said was that your purpose in going down there, to answer the questions as you thought we wanted them answered.

A. Well, I answered that I thought that was partly responsible.

Q. You thought that partly responsible would be more satisfactory to us than saying wholly responsible, did you? A. I did, which was true.

Q. You were not sincere then in the statements you made to us at that time?

A. As sincere as you were in calling me to your office when you knew I was a Government witness.

Mr. STANLEY MOORE.—We move to strike that out if your Honor please.

(Testimony of Edward Powers.)

The COURT.—Let it go out.

Mr. STANLEY MOORE.—Mr. Reporter, will you read the question?

(Question repeated by the reporter.)

A. Well, I was sincere in stating that that was partly responsible [829—770] for it.

Q. Well, generally speaking, was your attitude one of insincerity upon that occasion?

A. Well, no; not exactly.

Q. What, if anything, did you hope to gain by any attitude of insincerity assumed with respect to us, if you did assume it, what was your object and purpose in that? A. Nothing.

Q. In what answer that you made to us down there were you purposely and knowingly insincere?

A. I have just answered that question as to what I said there, by saying that it was partly responsible.

Q. You say that was the truth, don't you?

A. Partly responsible; yes, is the truth.

Q. Then, were you insincere in making that answer? A. Not in making that statement.

Q. In making what statement was it that you were insincere?

A. I was not insincere; I did not say I was insincere.

Q. Well, you put it it was the answer you wanted, wasn't it? What did you have reference to when you said that?

A. What did you bring me to the office for? You didn't bring me down there to tell you there was fraud, did you?

(Testimony of Edward Powers.)

Q. We will come to that later, Mr. Powers, whether we did, or did not. What was your object in giving to us answers you thought we wanted? What was your object in it?

A. I was trying to let you down easy.

Q. You were trying to let us down easy, were you?

A. Yes.

Q. And that was all the object or purpose that you had? A. It was. [830—771]

Q. It was a mere polite courtesy? A. Yes.

Q. That in your sensitiveness you were extending to us? A. It was.

Q. That is about the substance of it, is it?

A. It is.

Q. Now, you have testified here a moment ago, that when you said the overage was partly to be accounted for by the system of weighing, you said that was the answer you wanted, wasn't it? A. Yes.

* * * * *

Mr. STANLEY MOORE.—Q. I will ask you this question: What did you have reference to in saying that that was the answer that we wanted, if it was the truth?

A. Well, Mr. Moore, it is just like this: I might say just now "I don't like you," and I might have in my mind something else; and it was the same in that case.

Q. And perhaps it would be the same in the other case too, but without regard to that, Mr. Powers, you were thinking in your mind something else, were you, when you were making those answers down there?

(Testimony of Edward Powers.)

A. No, I gave you that answer to the question, which was true.

Q. You said here, perhaps I would make one answer to you and I would be thinking in my mind something else; what, if anything, did you have in your mind, what object or purpose did you have in replying to us as you did if you were replying in-sincerely?

A. No object at all; I had no object at all in replying to you in that way.

Q. Do you claim that Mr. Olney was insincere when he asked you to tell the whole business, to tell everything you knew, if he asked you that? [831—772]

A. He did not tell me that, he did not ask me that.

Q. Do you remember his saying anything to you or anybody saying anything to you about wanting the truth? A. I don't remember that, no.

* * * * *

Mr. STANLEY MOORE.—Q. I want to ask this further question: Do you claim, Mr. Powers, that you misstated anything in that conversation?

A. The statement I made as to the custom of weighing was partly responsible, is true; I did not make any misstatement to that effect.

Q. Without reference to that particular answer, do you say that you misstated anything in that conversation? A. Not that I remember of.

Q. Not that you remember of? A. No.

Q. Was not the conversation in substance and effect this— * * * that Mr. Olney stated to you

(Testimony of Edward Powers.)

that we wanted you to tell everything, all about the whole business, what went on down there, and to tell the truth; do you remember that part, or any part of it?

A. I do not. I remember about him asking me about the barges and the overages in the barges.

Q. And if there was anything wrong down there, and whatever there was wrong down there, to tell it; do you remember that?

A. There was no remark made about that at all. He had asked me about the cause of the overage or the overruns in the barges.

Q. Do you remember saying that the only thing that was wrong there was in regard to the loading from the barges?

A. You were asking me concerning the barges, were you not?

Q. No, but do you remember making that answer?
[832—773] A. What answer is that?

Q. That the only thing that was wrong was in connection with the loading of the barges?

A. With the loading of the barges?

Q. With the loading from the barges, I mean, the coaling of the vessels?

A. I never made that remark.

Q. Didn't you make that remark? A. No.

Q. Do you remember saying that that was not really wrong, or that that was the fault of the system?

A. I said the system was partly responsible. I have answered that before.

(Testimony of Edward Powers.)

Q. You remember saying, do you, or do you remember saying that there was nothing wrong so far as the Western Fuel Company was concerned?

A. I do not; I could not have said it without lying.

Q. Well, without regard to that, or your question of sincerity, or whether you would lie, do you remember as a matter of fact that you did say it?

A. I did not say it.

Q. You did not say it? A. I did not say it.

Q. Do you remember saying that there was nothing wrong so far as the employees of the company were concerned in connection with the loading of the buckets? A. I do not.

Q. You did not say that? A. No.

Cross-examination by Mr. OLNEY.

Mr. OLNEY.—Q. Mr. Powers, referring to this occasion when you came into the office of McCutchen, Olney & Willard and there met Mr. Moore, Mr. McCutchen and myself, I will ask you if you did not have this conversation with us and if I did not [833—774] say to you, “Mr. Powers, we want to know the truth about this matter”?

A. You asked me concerning the barges.

Q. I will repeat the conversation to you, and then I want an answer, yes or no, from you in regard to it: If I did not open the conversation by saying to you, “Mr. Powers, we want to know what the truth is about this matter, is there anything wrong or was there anything wrong down there in connection with the loading of the vessels, or anything that you know about down there on the waterfront,”—and did you

(Testimony of Edward Powers.)

not say, "Yes, there is something wrong"; and did we not then ask you what was it which was wrong, and did you not then reply to us that the thing which was wrong was that the buckets were heavier loaded when they were weighed than when they were not weighed?

A. I stated that that was partly responsible.

Q. And did we not ask you in response to that statement how that came about and how it was done, and did you not then say to us, didn't you go into an explanation and say to us, among other things, or say to us primarily as the explanation that the buckets when they were not being weighed came up at the rate of less than one minute and that when they were weighed it would take 3 or 4 minutes to weigh them or to weigh one, and that the men in the hold were being driven all the time to meet the hook, as you phrased it—

A. (Intg.) At times.

Q. (Continuing.) And that it was all they could do to load the buckets when they were going up fast in order to meet the hook?

A. At times, I said.

Q. And that when the weighing took place they had more time and they loaded the buckets heavier in that manner; and did we not [834—775] ask you if that was done intentionally and you said, "No, it is simply an incident of the business"; and did we not ask you in that connection, were any instructions given or was there any understanding that the buckets which were to be weighed were to be

(Testimony of Edward Powers.)

weighed heavier, and did you not answer, no; and did you not also, in response to that question say, "It is simply the human element of these men trying to meet the hook"; and did we not then say to you, "Why, there is nothing fraudulent or wrong about that"; and did you not say, "No, that was simply the human element"; and did we not then ask you, "Was there anything else wrong down there that you saw," and did you not say, "No, there was not"; and did we not then ask you, "Were any instructions issued," or in the course of the conversation did we not ask you if any instructions were issued by Mr. Mills or by anybody else, or was there any understanding in regard to this matter, or in regard to anything wrong down there, and did you not say, "No"? A. Part of that is true.

Q. And part is not true?

A. And part is not true.

Q. Will you pick out the parts that are not true?

A. I said the system was partially responsible; I did not tell you that I had not received any instructions from Mr. Mills.

Q. You did not? A. No.

Q. And you limited your answer to the fact that the system was only partially responsible?

A. I did.

Q. Is there anything else in the conversation that is untrue? A. That is all I remember.

Cross-examination by Mr. STANLEY MOORE
Continued.

I have been unemployed for about a year. I have

(Testimony of Edward Powers.)

been [835—776] under subpoena by the Government for a number of months, receiving, as I understand, witness fees while I am in attendance on court. During the past year I have been unemployed but during part of the time I have been working for my father painting his house. Otherwise, I have had no employment in that period. I made a few trips to sea since I left the Western Fuel Company in July, 1911. I was deck engineer on the "Manchuria" for one trip. I also made a trip on the "San Juan." Those two trips occupied about five months. Also, since I left the Western Fuel Company I have done a little stevedoring on two or three ships, probably 15 or 20 days' employment all told. That was a couple of years ago. I now live with my father at 720 Harrison Street. My brother lives at the same place. I have observed him to come into the courtroom. I haven't talked to him to any extent since the recess yesterday. We haven't been friendly for a number of years. Aside from my duties with the Fuel Company as assistant superintendent in June and July, 1911, I was also conducting boxing and sparring exhibitions at the Dreamland Pavilion in conjunction with a brother of Mr. J. B. Smith.

Mr. STANLEY MOORE.—Q. In connection with that, Mr. Powers, did that have anything to do with your leaving the fuel company?

A. Yes, that was partially responsible for my leaving the fuel company.

Q. You use the word "partially." A. Yes, sir.

Q. Was not that stated to you as being entirely

(Testimony of Edward Powers.)

responsible? A. It was not.

Q. Did you leave voluntarily?

A. Well, I left the books there and I left the office and didn't [836—777] show up for three or four days. Do you want me to go on and explain how I left the fuel company?

Q. You might explain that matter to us, yes.

A. Mr. Mills owed me money, and he still owes me money. I went to the office there and he spoke very nicely to me; he had \$80 coming to him for trimming; I had the money and I kept it because he owed it to me. That led to a dispute. I said I would see Mr. Smith about it. He made the remark that if I went he should go with me. I went to Mr. J. B. Smith and told him the trouble and he said to me, "Go back, Eddie." I said, "Mr. Mills and I had a quarrel down there"; he said, "It doesn't matter whether you and Mr. Mills had a quarrel, or not, you go back." So I went away and went back. Mills and I had another quarrel and I left. I sent word in to Mr. J. B. Smith that I wanted to see him, but he wouldn't see me. That is how I came to leave the Western Fuel.

Q. Do you consider that you left them voluntarily and of your own accord?

A. Well, I left the books in the office there,—I knew what I was doing when I left them for 3 or 4 days without anyone being there. That is partially voluntary.

Q. Do you consider it a case of resigning or of being discharged?

(Testimony of Edward Powers.)

A. Mills asked for my resignation.

Q. You have been referring to it all the time as the time when you left the Fuel Company.

A. Well, I am not there now so I must have left.

Q. At the time you left there was a quarrel between you and Mr. Mills, was there not?

A. There was.

Q. Have you not said since that Mills had lied about you to Mr. Smith?

A. He did to other people.

Q. And that he had knocked you to Mr. Smith?
[837—778]

A. He did. I don't know whether he knocked me to Mr. Smith,—he knocked me to other people. I have no knowledge of what he said to Mr. Smith. Mr. Smith never spoke to me until he saw me in the corridor when the trial started and he had the "How do" then.

Q. You're bringing that in too. Speaking about your leaving the Fuel Company back in 1911, have you not stated to people that Mills had lied about you to Smith? A. I did.

Q. Have you made the statement—and many times, Mr. Powers,—that if it were not for F. C. Mills you would have your job down there to-day?

A. I may have made some such remark as that. I said Mills was the cause of my getting out of there.

Q. Have you not said time and time again that if it were not for F. C. Mills you would have your job down there to-day?

A. I made the remark I would not have been out

(Testimony of Edward Powers.)

of there except for F. C. Mills; I never made the remark I would be there to-day only for F. C. Mills.

Q. Don't you recall, Mr. Powers, that as a matter of fact you have made that remark?

A. No. There have been enough around asking me, but I never made that remark.

Q. Without anybody being around or asking you, or having to ask you about it, have you not stated it upon numerous occasions?

A. I have stated that I would never have left there only for F. C. Mills.

Q. And if it had not been for F. C. Mills, the question I am trying to have you answer is, have you not stated that you would be in the job to-day?

A. I don't think I ever made that remark. I may have made that [838—779] remark. The remark generally was made that I got out of there on account of F. C. Mills. I believe Dave then went in with Mills. I don't know what he went in as. I never went around the place again.

Mr. Tidwell has said something to me with respect to a reward. He asked me to tell him something about the Western Fuel Company, and I refused; and he went on to state that there was a reward offered for any informer, and I told him neither he nor the United States could make an informer of me; that is the stand I took. That conversation took place in January or February of 1913; it may be December. He only spoke to me once about the matter of a reward. He didn't speak to me on that subject in August, 1913, at the time when my brother

(Testimony of Edward Powers.)

and Mr. Tidwell had some trouble.

Mr. MOORE.—Q. Then I will ask the question: Do you remember meeting a man by the name of Mike Carroll on Saturday?

A. You bet; every time he came up Third Street he had an eye around looking for me, and he said, “J. B. Smith would not do that, Mr. Mills and Mayer might do it, but J. B. Smith is an honest man.” Every time he saw me he said that. I know Carroll.

Q. Then you remember that?

A. I remember, I never made any remark like that. The only thing, he was full of whiskey, and he was saying, “J. B. Smith was too honest, he would not do anything like that. Mills and Mayer, the dirty thieves, might do it, but J. B. Smith was all right.” I will give you a few more conversations, if you want them.

Q. We will come to those, Mr. Powers, but you are through with Mr. Carroll now, are you, for the present? A. He had better not come near me.

Q. Do you remember having any talk with him about the reward in August? A. No, I do not.

[839—780]

Q. Do you remember meeting Carroll in the month of August?

A. I met him—every time I looked around I saw him.

Q. Do you remember looking around and seeing him in the month of August?

A. I believe I seen him very near every other day.

(Testimony of Edward Powers.)

Q. He is a teamster, isn't he, for the Fuel Company?

A. Darned if I know what he does, he rides in a buggy.

Q. I will ask you, Mr. Powers, if it is not the fact that you met him on the 9th of August?

A. I don't remember. I have met him I think every once in a while.

Q. Didn't you tell him that the prosecution was having a row with your brother Dave?

A. I did not.

Q. All right.

A. He told me, he says, "I see by the papers that Tidwell, that dirty stinker, is having a row with your brother"; he says, "That fellow is only doing it for his own reputation, to hold his job, he don't care for you or your brother."

Q. Then, the subject did come up between yourself and Mr. Carroll at that time, did it?

A. He made the remark, I never did; I just laughed at him.

Q. That row between Tidwell and your brother was on the first of August of last year, was it not?

A. I don't know when it was.

* * * * *

Mr. MOORE.—Q. Now, don't you remember from the circumstance of Mr. Carroll speaking about the row between Mr. Tidwell and your brother, and what he said respecting Mr. Tidwell, that you did meet Carroll in August of last year?

* * * * *

(Testimony of Edward Powers.)

Mr. MOORE.—Well, I will ask you this question, Mr. [840—781] Powers: Isn't it a fact that on the 9th day of August, 1913, you met Mr. Carroll on Third Street, and that you told him that Mr. Tidwell had subpoenaed you as a witness, and that he had promised you a good percentage of the moneys they would get from the Western Fuel Company?

A. Oh, Mr. Moore, that is absurd; that is a lie; it is a downright lie of Carroll. When he came up there, the only words he had, the only remarks he made was downing Tidwell, and boosting J. B. Smith. That is all that Carroll could say, and he could hardly say that, he was so full of booze every time I seen him.

Q. Are you through? A. It looks that way.

Q. And that after saying that Tidwell had promised you—

A. (Intg.) I did not say it, Mr. Moore.

Q. I want to finish the question, Mr. Powers, then you can answer it once and for all: And that after saying that Mr. Tidwell had promised you a good percentage of the money they would get from the Western Fuel Company, didn't Mr. Carroll ask of you, "Do you think you are going to make a killing?" and did you not say, "He promised it to me," and that you had said to Mr. Tidwell that you had a job to go to sea, but that Mr. Tidwell had told you not to worry, that you would remain here and get a percentage of that money?

A. Mr. Moore, Mr. Carroll won't meet me on the street and tell me that; Mr. Carroll lies.

(Testimony of Edward Powers.)

Q. Just answer the question. A. No.

Q. Yes, or no. A. No.

Q. Did you say that in substance?

A. I did not.

Q. Nor in effect?

A. I did not in substance nor in effect, either.

Q. Is any part of that conversation which I have just related to [841—782] you true?

A. It is not.

Q. Has anything that has been said to you true—did you tell Mr. Carroll that you had a job, about going to sea?

A. I did not. After I made the trip to sea I seen Carroll; I never seen him before.

Q. In August, 1913, did you say anything with respect to a job going to sea?

A. I was under subpoena, here, how could I go to sea? No, I did not.

Q. You did not? A. I did not.

Q. Was anything ever said between you and Mr. Tidwell, or you and your brother, with respect to any job or positions in regard to either you or him?

A. No.

Q. Nothing of that kind?

A. Nothing of that kind.

Q. Or anything in regard to that after this case is over? A. Not a thing.

Q. Not a thing? A. No.

Q. You have now related to us all that has been said as between you and Mr. Tidwell in regard to any reward?

(Testimony of Edward Powers.)

A. Well, when Mr. Tidwell told me there was a reward and he got his answer, he never broached the subject again.

Q. Now, Mr. Powers, have you and your brother talked any in regard to the reward, so far as he was concerned? A. No.

Q. Have you ever asked anybody if they thought that Dave would get a reward out of it?

A. Not that I remember of.

Q. Do you remember asking anybody within the last couple of days? A. Not that I remember of.

Q. Do you state positively that even since the time your brother has been called as a witness here, in the very hallroom leading [842—783] to this court, you have not asked people whether they thought he would get a reward? A. I have answered that.

* * * * * * * *

Mr. MOORE.—Q. Haven't you asked it, for example, of Mr. D. C. Norcross, secretary of the Western Fuel Company, in the hallway to this courtroom, since your brother quit the stand?

A. Asked him what?

Q. If your brother Dave would get a reward?

A. The only remark that he made,—Norcross took me down and had me have a lemonade with him, and Norcross says—and he has repeatedly said, every time he has seen me, “Don't you think that Mills took that coal out of these pockets and didn't charge it on the barge—don't you think that, Eddie”? He has asked me that every time he has seen me. I never made a remark concerning that to Norcross,

(Testimony of Edward Powers.)

and yet Mr. Norcross has told me "After the trial is finished, we will take care of you; I would like to tell you what J. B. Smith has said, but I will tell you when the trial is over."

Q. Have you ever asked him for a position?

A. I have not.

Q. Did you suggest that you would like to have a position with the company? A. I did not.

Q. Did you ever ask anybody down there to recommend you and get you a position?

A. I did not. I asked Mills for a recommendation; he said he would go with me personally, and would recommend me, but he would not give me any written recommendation.

Q. When was it that you asked Mr. Mills to endeavor to secure you a position?

A. When he would pay me \$20 a month that he owed my father, [843—784] one day when I met him to receive the \$20.

Q. When was that? A. A few months ago.

Q. It was within the last few months?

A. I don't know when; it was a couple of months ago; I don't remember just exactly how long—it is not within the last two months, for he hasn't paid the last two months.

Q. Was it since you have been subpoenaed as a witness in this case?

A. Mr. Mills met me down in the corridor leading to the street, or in the hallway leading to the street, and said, "I know what you can do, but what is the use, what is the use." I felt sorry for the old man.

(Testimony of Edward Powers.)

Q. The question is, Mr. Powers, since you have been subpoenaed as a witness in this case, and without regard to whether or not you felt sorry for the old man, have you asked the old man to recommend you for a position?

A. I have not, excepting at the time I told you I met him, I asked him for a recommendation, and he said, "Yes," but in the meantime he did not send it to the right place I asked him to send it to, and I telephoned to him, and he said he would go with me any place "you want to, any time, Eddie, and recommend you personally."

Q. Was that since you were subpoenaed as a witness in this case?

A. I have been under subpoena the last year.

Q. Can't you fix the month without regard to this money that you say was owing to your father by Mr. Mills, can't you fix the date when it was that you asked Mr. Mills to endeavor to secure a position for you?

A. I think it was about four months ago; I think it was. I will tell you, he was going to some meeting at the Wells Fargo [844—785] Building, at Second and Mission the same day, I believe.

Q. Do you remember whether or not it was August 3d?

A. It was about the 3d of August; he generally paid one or two days afterwards.

Q. Was it after the prosecution had had the trouble with your brother Dave?

(Testimony of Edward Powers.)

A. I think it was, yes.

* * * * *

Q. Whenever that was, August 1st—we will take it as of August 1, 1913, did you telephone to Mr. Mills to meet you somewhere about August 2d?

A. I telephoned to Mr. Mills; I will tell you how I telephoned to Mr. Mills. Mr. Mills paid me \$20 at Second and Folsom Streets. I went to him, and he says, “My wife is sick, and I have not got money enough to get something to eat,” and he went right on with that cry, and I went to my father and I says, “The poor fellow is sick, and has got no money,” and he says, “All right.” So, I telephoned to Mr. Mills, and Mr. Mills came to Second and Folsom Streets, and I says, “Mills, you can take the money for you two hungry people.”

Q. When was it you asked Mills, the poor man, after you met him on the street?

A. After that.

Q. How long after that?

A. I don't remember exactly. I don't remember dates.

* * * * *

Mr. MOORE.—Q. Isn't it the fact that on or about August 1st or 2d you telephoned to Mr. Mills to meet you on the street, I think close to the Wells Fargo Building?

A. No, Second and Folsom Street.

Q. And that you said to him that your brother was now out of the prosecution, and that you wanted him to get you a job? [845—786] A. I did not.

(Testimony of Edward Powers.)

Q. Did you say that in substance or effect?

A. I did not say it at all, in any way.

Q. Did you then and there ask him to recommend you for a job, or endeavor to secure a job for you?

A. His recommendation would not be much.

The COURT.—Answer the question.

A. No.

MR. MOORE.—Q. Isn't it a fact that you asked Mr. Norcross not once, but a number of times, for a job with the company? A. I did not.

Q. Isn't it a fact that he told you he could not discuss or consider any such thing as that with you, or have anything to do with it? A. He did not.

Redirect Examination by Mr. ROCHE.

MR. ROCHE.—Q. Mr. Powers, how frequently did you come in contact with Mr. D. C. Norcross since the date on which you severed connections with the Western Fuel Company, in July, 1911?

A. I met him at the Grand Jury room every time the Grand Jury was meeting, that I was subpoenaed, and while this trial is on, he comes out in the hall every day and speaks to me.

Q. Has he been friendly with you during the past few months?

A. Every time he came out of the courtroom here, he says, "Wait, I will come back, and we will go down and have a lemonade."

Q. How often have you and Mr. Norcross, the secretary of the Western Fuel Company, participated in a lemonade or something of that kind?

(Testimony of Edward Powers.)

A. Several different occasions.

Q. And were you always invited by Mr. Norcross—
[846—787]

A. (Intg.) And paid for by Mr. Norcross.

Q. That is, Mr. Norcross, the secretary of the Western Fuel Company, would invite you to have these lemonades, and Mr. Norcross would be the person by whom the lemonades would be paid for, is that correct? A. That is correct.

Q. And upon none of those occasions did Mr. Norcross suggest to you the impropriety of inviting you to take a lemonade with him, or discussing any matter with him; isn't that true? A. That is true.

Q. At whose request did you go down to the office of Mr. McCutchen for the purpose of meeting the attorneys representing the defendants in this case.

A. D. C. Norcross.

Q. This same D. C. Norcross?

A. The same person.

Q. Did you volunteer to go down there, or did the same D. C. Norcross ask you to go down?

A. Shall I relate the conversation I had with him?

Q. How did the conversation take place, in the first instance?

A. Well, at the last Grand Jury meeting, it was about four o'clock, and Norcross says, "Are you going anywhere?" I said, "I am here on the Grand Jury." And he says, "I would like you to go down to the office of our attorneys; we have got something we want to explain away, that barge overage," he says. "Well," I says, "that barge overage shows

(Testimony of Edward Powers.)

in the book, it shows for itself." He says, "Well, come down and we will explain it," and so I went down there, and I met Norcross—I was going up in the elevator, and Norcross says,—before that, Norcross says, in the corridor, over there, he says, "You come on down, we know you are not going to do anything against us. In fact, we know positively you did not say anything against us." So, I went down, and when we were in the elevator, Norcross said, [847—788] "I was speaking to Mr. Smith last night, and I was telling him that you would help us out and come down here, you would come down and see the attorneys today. I would like to tell you what J. B. Smith was going to do for you, but I can't tell you now, I can tell you after the trial." Then we went up to the office of Mr. McCutchen, and Mr. Moore being there, with Mr. McCutchen and Mr. Olney, we spoke for a while, and then when they were finished—they said they were finished, and Norcross turned away, and Mr. Olney said "There is only one question more, we want to ask you," just as Mr. Norcross went through the door, and then they dismissed me.

Q. In any event, Mr. Norcross, as secretary of the Western Fuel Company, who are represented here by Mr. Moore and these other attorneys, was the gentleman by whom this appointment was made; is that correct? A. It was.

Q. Did he make a specific appointment for the day following the day when you were subpoenaed to appear before the Grand Jury?

(Testimony of Edward Powers.)

A. He did. He wanted me to go down that same afternoon.

Q. He wanted to take you fresh from the Grand Jury room down to the office of the attorneys for the Western Fuel Company? A. He did.

Q. At that time, there was no objection urged by him to your coming in contact with his attorneys, with the defense's attorneys, nor did he suggest to you the impropriety of that course?

A. He said, "Maybe some of that Tidwell's men are around, or some secret service men" would see us as we went through the hall, and when we got to the office of the attorneys, he said, "Eddie and I were afraid some of the Government detectives or secret service men were following us."

Q. In any event, the appointment was made by Mr. Norcross, it [848—789] was kept by you the next morning, and you met Mr. Norcross and went with him to the office of Mr. McCutchen; is that correct? A. I did.

Q. When you reached the office of Mr. McCutchen, Mr. Olney, his partner, was there, and Mr. Moore?

A. And they had the seats all arranged for me to be in the middle.

Q. Those three persons were present at the time and already there when you entered the room?

A. Yes. I phoned to Mr. Norcross. He told me to phone up and he would tell me what time to come up. I believe I seen Mr. Norcross going into the office a half an hour before then, but when I phoned they said he was not there; they claimed he had not

(Testimony of Edward Powers.)

reached the office yet, but the second time, when I telephoned half an hour later, he was there. I believe he was waiting for Mr. Moore to come to the office.

* * * * *

Mr. ROCHE.—Q. In addition to Mr. Norcross' manifestations of friendship, to what extent have you come in contact with the defendant, James B. Smith, during the trial of this case?

A. Just to pass him in the corridor, that is all; I met him in the elevator one day.

Q. Prior to the trial of this case and after you ceased being employed by the Western Fuel Company, were you friendly with Mr. Smith?

A. We never spoke; I seen him several times but we never spoke.

Q. That is, he would pass you by on the street without speaking to you?

A. He would pass me once or twice. [849—790]

Q. Did anything of that kind occur in the corridors of this courthouse since the commencement of this trial?

Q. Whenever he would meet you, do you mean?

A. Whenever he would meet me.

Q. You say you recall at one time meeting him in the elevator of this building? A. I do.

Q. Was anything said upon that occasion by him to you as the elevator started down and for some reason it came back again.

A. Mr. Stanley Moore and Mr. J. B. Smith entered the elevator; Mr. Smith said to me, "How do you

(Testimony of Edward Powers.)

do, Eddie?" Mr. Moore was there. Mr. Smith said something, I don't know whether he said Mr. Moore, or Stanley, or whatever it was, "Mr. Moore, you know Eddie, don't you?" And Mr. Moore said, "Why, yes, how are you to-day, Mr. Powers?" And he shook hands.

Q. You don't mean to say that Mr. Stanley Moore, who cross-examined you this morning, shook hands with you, do you? A. Yes, he was the gentleman.

Q. And he was on that occasion introduced to you by the defendant, James B. Smith?

Mr. STANLEY MOORE.—Let him do the testifying, Mr. Roche. This is very important, you know, and we don't want to have him led.

Mr. ROCHE.—Q. By whom were you introduced to Mr. Stanley Moore, the gentleman by whom you were cross-examined this morning?

Mr. STANLEY MOORE.—I suggest again, Mr. Roche, let him do the testifying. This is the most serious evidence we have had yet, and I suggest that the witness be permitted to testify himself without any suggestions being made by counsel.

Mr. ROCHE.—This is not a leading question.
[850—791]

A. Mr. D. C. Norcross.

Mr. STANLEY MOORE.—The fact of the matter is that I met him before and I spoke to him before.

The WITNESS.—Yes, in Mr. McCutchen's office.

The COURT.—The witness has answered the question.

* * * * *

(Testimony of Edward Powers.)

Mr. ROCHE.—Q. How long did this interview last which took place in Mr. McCutchen's office?

A. I should judge about 15 minutes.

Q. You testified upon direct examination, and you were likewise cross-examined upon the subject regarding endeavors on our part to obtain statements from you; how frequently did Mr. Tidwell endeavor to obtain a statement from you regarding your knowledge of the facts and circumstances connected with this case?

A. I have already stated that Mr. Tidwell tried it once and he did not succeed, and he never broached the subject again. He may have made a remark to me concerning the case or something like that, but he never tried to go into the case again.

Q. That is, he never after the first occasion to which you have referred, asked you to make a statement? A. He did not.

Q. You know Mr. McNab, the former United States Attorney, do you?

A. I do; I met him here in the building.

Q. You met him here in the building at a time when you were subpoenaed to testify before the Grand Jury, and prior to the return of one of the indictments in this case, did you? A. Yes, sir.

Q. Did Mr. McNab on one or more occasions endeavor to obtain a statement from you concerning your knowledge of the facts and circumstances connected with this case? [851—792]

A. He did.

Q. Did you at any time or at any place or under

(Testimony of Edward Powers.)

any circumstances make to Mr. McNab or to anyone connected with the United States District Attorney's office any such statements?

A. I made them to Mr. McNab.

Q. You made statements to Mr. McNab?

A. Yes, sir.

* * * * *

Q. I don't mean in response to a question put to you, Mr. Powers, or anything of that kind, but did you ever make any statement regarding what you knew about the case?

* * * * *

A. I did not.

I first got connected with the fistic exhibitions to which I have testified when I was employed by the Western Fuel Company. Those activities covered about two years. They did not interfere in any way with the discharge of the duties which I was required to perform for and on behalf of the Western Fuel company. I have not as yet heretofore related all the circumstances connected with my leaving the Western Fuel Company. When I left the books there and did not make any entry for the day I left, and had not appeared for three or four days, Mr. Mills telephoned me and after 4 or 5 days I went to the Western Fuel Company and sent my name in to Mr. James B. Smith.

Q. In a question put to you by Mr. Olney this morning regarding the conversation which he claims transpired between yourself and himself in the office of Mr. McCutchen, he said, among other things,

(Testimony of Edward Powers.)

speaking to you: "If I did not open up the conversation by saying to you, Mr. Powers, we want to know what the truth is about this matter, is there anything wrong or was there anything wrong down there in connection with the loading of vessels, or anything that you know about down there on the waterfront"; and did you not say, "Yes, there is something wrong," and did we not ask [852—793] you what it was which was wrong; and did you not then reply to us that the thing which was wrong was that the buckets were heavier loaded when they were weighed than when they were not weighed. You remember that being a part of the question which was put to you by Mr. Olney in the presence of the jury this morning, do you not? A. I remember it.

Q. And then there was something else said about the system; you recall that, do you not, in which Mr. Olney said that you said it was due to the system in vogue relating to the weighing of the coal; you recollect that testimony, do you not? A. I do.

Q. And you recall the testimony given by you in which you said that at that time you said the system was partially responsible for it?

A. That is what I remember saying.

Q. The system to which you referred upon cross-examination was the system being pursued in the weighing of the tubs of coal that were being discharged from time to time from the barges?

A. It was.

I have testified that the men had more time to fill the tubs with coal when they were being weighed

(Testimony of Edward Powers.)

than when they were not being weighed, and that the tubs are hoisted up on some occasions more rapidly than on other occasions, and that two men are assigned to each tub; and that it oft times occurs, during the time that coal is being hoisted up from the hold of a barge to the top of the hoist, that the men who are filling the remaining tubs in the hold of a barge complete their labors before the tub descends, and that this is the manner that coal is ordinarily discharged from a barge. About 360 tons a day is a good average day's work. If these buckets are being hoisted at say 30 an hour, that would be about 2 to each bucket, the men would have practically eight minutes within which to load and bring the bucket of [853—794] coal forward to the hatchway. It frequently occurs, then, that the two men engaged in loading each tub or bucket complete the labor of loading that tub before it is necessary for them to meet the hook; and it also often occurs that these two men complete their labor, so far as the loading of a particular tub or bucket is concerned, before they are called upon to meet the hook upon occasions other than those upon which the tubs are being weighed. There have been occasions when more than two men were employed for the purpose of filling each particular bucket or tub of coal. The rapidity with which these buckets would be hoisted from the hold of the barge to the top of the hoist depends, among other things, upon the ability of the men to perform their work.

Q. How frequently has it occurred that you would

(Testimony of Edward Powers.)

employ more than two men to fill each particular tub of coal?

A. They were not exactly employed to fill the tubs; they would have a long run perhaps, right at the ends of the barge; that is, the bow and the stern, and we would send two men down into the hold, one at each end of the barge; there are two tubs in each end of the barge,—we would send one man forward and one man aft and their duty was to throw lumps of coal in and to throw a shovel full in and push the tubs out, to quicken the delivery of the coal, to quicken the work.

* * * * *

The COURT.—Q. Eliminating all the testimony you gave yesterday from the question put to you by counsel, what was your practice in weeding out the men?

A. The hatch-tender was sent in charge of each man. If they had a clear run, that is, the hole was large, and there was nothing to stop them, nothing to blockade them, and if the engine did not [854—795] stop, we knew how much they should hoist in a day, or we knew how much they should hoist in an hour, and if they did not get out that much we would ask the hatch-tender what was the matter, and he would say, well, the men did not meet the hook, and then we would say, well, if they can't do the work fire them and get men who can do the work.

Mr. ROCHE.—Q. How would you determine the quantity of coal which each gang of men handled from time to time? Would it be determined by the

(Testimony of Edward Powers.)

number of tubs that went up or by the weight of the coal that was hoisted during the time each gang was on duty?

A. By the weight of the coal.

Q. And it is a fact, is it not, Mr. Powers, that the weight of the coal which was discharged by each particular gang was determined by the weight of the buckets which in fact were weighed?

A. That is true.

Q. And by those buckets alone, taken as an average; is that true? A. That is true.

The reason for my lack of employment during the last year has been that I could not obtain employment. I went to Mr. Chisholm on the Mail Dock, and asked him to speak to the stevedore and ask him to give me a job pushing a truck on the wharf, or doing anything. I also went to the foreman on the Portland dock and asked him the same thing. I attempted to be released from the subpoenas served upon me from time to time by the Government in order to enable me to go to sea during the last year.

There was not, so far as I could see, any stenographer present during the conference which I attended in the office of Mr. McCutchen. There may have been a dictograph. [855—796]

While coal is being discharged from a barge in to a vessel, coal is of course consumed upon the barge for the purpose of generating steam. That coal is obtained out of the hold of the barge, and is a part of the cargo of the barge.

Q. Is it or is it not a fact that all of the coal con-

(Testimony of Edward Powers.)

sumed from time to time upon the barges for the purpose of generating steam is taken from the cargo that is placed upon the barge, either from the off-shore bunkers or from some ship or from the yard?

A. It is.

Six or seven tons a day are consumed on these barges during the process of unloading. I believe the "Melrose" consumes more coal than any of the other barges. I would say she would use eight tons a day. Where the records of the defendant Mills show that a certain quantity of coal was laden into the barge and a certain quantity of coal discharged from the barge, and that an overage occurs, the coal consumed by the barge is not calculated in the overage.

I recall testifying concerning the "Algoa." I think between 50 and 100 tons were, during her discharge, taken from her cargo and put into that ship's bunkers, and that number of tons is not accounted for in the records of the defendant Mills, so that the amount thereof would have to be added to the overage. When the "Algoa" was discharged there was quite a little coal left in her. There were lumps scattered around the hold and in the side of the ship.

Mr. ROCHE.—Q. During the time you were acting as assistant superintendent to the defendant Mills, did you personally employ or discharge men? [856—797] A. I did.

Q. Did you at times personally employ or discharge men who worked as shovelers in these gangs upon the barges?

(Testimony of Edward Powers.)

A. I did not personally discharge them; I told the hatch-tender to discharge them.

Q. Did you personally employ them?

A. If we were working 3 or 4 barges I might go out and chase up men to put on the barge and put a hatch-tender over them.

Q. That service was ordinarily rendered by the hatchman, was it? A. It was.

Q. Do you know whether the hatchman had any instructions with reference to the particular man or particular men to employ upon those occasions?

* * * * * * * *

A. He was supposed to get men able to do the work.

Q. Do you mean by that that he had instructions to that effect?

A. Yes, sir; he had to get the work out; he was responsible for discharging that barge, and if he did not discharge enough I was supposed to get after him and find out what was the matter.

* * * * * * * *

Q. Let me put one other question to you upon that subject, Mr. Powers: Is it not a fact that if a man employed upon one of these barges as a shoveler was not able to shovel the amount of coal which the hatch-tender or the Western Fuel Company believed he should shovel, ascertained by the out-turn or Government weight of the coal shoveled, that he would be discharged; in other words he would be, to use the language of the barge, given the hook instead of

(Testimony of Edward Powers.)

being permitted to meet the hook? [857—798]

* * * * *

A. They were supposed to fire him if they could get a better man in his place.

The times when the Government weighers made complaints were when they caught the men overloading the tubs when they went on the scales and not filling them properly when they were not going on the scales.

I remember that the stern of the barge "Melrose" sank on one occasion. I believe the coal was heated, and the cargo was submerged up about to the main hatch at high tide. The barge was a few days at least in the water. A part of her cargo was discharged at the time the water was being pumped out. That part of her cargo was put into one of the Freeze barges. The "Melrose" and the barge itself were eventually towed to Folsom Street. The next day the coal that was taken out of her was replaced from the other barge right into the "Melrose"; whereas, the cargo on the "Melrose," I think, went into a Japanese steamer; at any rate, it was discharged in a short time. I have no recollection when that occurred.

Recross-examination by Mr. STANLEY MOORE.

Mr. STANLEY MOORE.—Q. Do you remember your telling Mr. Norcross while you were out in the hall, both of you under subpoena to appear before the Grand Jury, and while you were waiting around to be called, anything about the system of weighing

(Testimony of Edward Powers.)

down on the barges, or this proposition of meeting the hook?

A. No, I don't remember; I may have but I don't remember making any statement.

Q. Mr. Norcross himself you never used to see down there on the Mail Dock or around the barges, did you? [858—799] A. Never.

Q. His work did not bring him very close to those operations, did it? A. No, sir, it did not.

Q. Is it not a fact that you were talking to him, and you were talking to him at considerable length on that particular day while you and he were waiting to appear before the Grand Jury with respect to that matter of the meeting of the hook down there?

A. Not of the meeting of the hook; we were speaking of the Western Fuel Company; and before I went to the Grand Jury room Mr. Norcross said if they asked me what will I say—no, I asked him—I mean, he says, “The Grand Jury will ask you what you were talking to me about”; he said “Tell them that you were talking about generalities.”

Q. That may stay in, your Honor, although it is not responsive to a question. I have no objection to it. Without regard to whether he said generalities, Mr. Powers, or what he said, I am asking you now for what was said on that subject; did you say anything to him while you and he were waiting around to be called before the Grand Jury about this matter of meeting the hook and the buckets coming up only three-quarters of a minute apart at times between weighing and their being considerable delay

(Testimony of Edward Powers.)

at the times they were weighed; did you say anything to him with reference to that?

A. I may have said that; I don't remember; I may have said that.

* * * * *

Q. (Intg.) We may get around to that; I am asking you now about the conversation you had with him prior to the time of your going down to the office of Mr. McCutchen and Mr. Olney, and I am asking you if it is not a fact, to the best of your recollection, [859—800] that you then explained or stated to Mr. Norcross this matter of the unloading of the buckets from the barges, and the proposition of meeting the hook and the delay that came about at the time a weighing was to be taken; now, is it not your recollection—

A. (Intg.) Not at the last Grand Jury; I may have made that to him before, but it was not at the last meeting of the Grand Jury.

Q. I am talking now just about a day prior to your coming down to Mr. McCutchen's office.

A. That statement was not made that day, no.

Q. Is it not a fact that at the time he spoke about your speaking to the attorneys for the defendants you had been talking about the overage and about the method of the unloading of the barges and about this proposition of the meeting of the hook and the time that the buckets went up when the weights were not to be taken?

A. He never said anything about it on that day; he never was around there.

(Testimony of Edward Powers.)

Q. No, I am not asking you about him not having been around down there where the barges had been unloading; I am asking you if you were not talking to him about it and explaining it to him?

A. I may have spoken to him about that, but it was not on the day prior to the day we went to your office.

Q. Is it not a fact that you had been talking to him about that, when he stated to you "Would you mind explaining that to our attorneys?"

A. Do you want me to repeat the entire conversation I had with Mr. Norcross?

Q. I want you to answer the question, please.

A. I did not. [860—801]

Q. And he asked you if you had any objection to doing so?

A. No. He asked me to go down there to see you and to—

Q. (Intg.) Did he ask you—

Mr. ROCHE.—Just a minute. Let the witness finish his answer.

A. He asked me if I would go down there, and I said I had no objection to going down there; and he said, "Why, no, you have not said anything against us; you are not against us; you are with us.

Mr. STANLEY MOORE.—Q. Very well. He did ask you if you had any objection to your going down there. A. He said, "Will you go down"?

Q. And then did you say, "I have no objection to going down"?

A. I said I would go down, which I did.

Q. Well, that word was used. At that time had

(Testimony of Edward Powers.)

anything been said about employment?

Q. This matter of employment came up in the elevator, did it?

A. Just as he stepped in the elevator he made that remark; he did not say anything about employment; I did not make that statement. I said that Mr. Norcross stated to me, as he stepped into the elevator, or while we were in the elevator just leaving the ground floor, he said, "I was talking to Mr. Smith last night, and I told him you were coming down here to see the attorneys, and I would like to tell you what he said he was going to do with you, I can't tell you now, I will tell you after." That was the remark Mr. Norcross made.

That statement was made either in the elevator or stepping into the elevator. I stated that I would go down there to the office of the attorneys for the defendants before any suggestion [861—802] or statement regarding what Mr. Smith would do for me had been made to me.

Mr. STANLEY MOORE.—Q. Was Mr. Norcross' remark to you, what you had in mind when you testified here in answer to my question as to how you would answer the attorneys on that occasion, that a person might have something else in his mind?

A. No, sir. Do you want me to give you the explanation about it?

Q. Yes.

A. Well, I will tell you. I would not trust the words of certain people it came from as far as I could

(Testimony of Edward Powers.)

throw a bull by the tail. That is why I would not believe him.

Q. In other words, you had no expectation or idea that the Fuel Company would give you a job, had you?

A. Give me a job? No, I did not.

Q. What was it, then, that you had in mind when you testified here this morning with regard to answering the questions the way we wanted you to, that a man might have something else in his mind?

A. I believe I answered that question this morning, Mr. Moore.

* * * * *

Mr. STANLEY MOORE.—Q. When I saw you in the elevator, or when we rode down in the elevator, that was not the first time I had spoken to you since the meeting down in Mr. McCutchen's office, was it?

A. You may have nodded to me.

Q. Don't you know that I had spoken to you? I am not going to argue this matter with you.

A. I think you did speak to me or you nodded to me. There was no conversation, though.

Q. We had exchanged greetings?

A. I believe so. [862—803]

* * * * *

Mr. STANLEY MOORE.—Q. You spoke about lemonades that you had with Mr. Norcross; they were not both lemonades, were they?

A. Not Norcross'; he had a stick in his.

Q. As a matter of fact, on one occasion you spoke to him in the hall, or going up the street, did you not,

(Testimony of Edward Powers.)

about this very barge—the “Melrose”—that counsel inquired about, the sinking of the “Melrose,” or the partial sinking?

A. Yes, he asked me about that; he said Mills did not remember it; he said Mills thought somebody telephoned to him in Oakland about it one night; he spoke about that.

Q. Did he tell you that Mr. Roche had asked him to try and find out about the sinking of that barge, or whether some coal had been lost as the result of the sinking?

A. I think that Mr. Norcross asked me, if I remembered it, and I told him I did; he said that Mr. Mills did not remember it.

Q. And he had a conversation with you about that, as to whether the barge sunk and as to whether the cargo of coal was lost?

A. He absolutely did not say a word about the cargo of coal being lost or otherwise, or anything concerning the cargo at all.

Q. What did he ask you about the barge “Melrose”?

A. He asked me if I remembered the date she was taken over there and I told him I remembered taking her over there, but I did not remember the date. I told him to ring up the Spreckels Company or Mr. Prior, who was superintendent of it, and he would tell him.

Mr. STANLEY MOORE.—Q. Now, another time that you and he had a drink, you taking lemonade and he taking something else, do you remember it was

(Testimony of Edward Powers.)

while your brother was being examined here?
[863—804]

A. I think so. He treated quite often.

Q. And you asked him some questions about your brother, or how he was getting along, or something like that, and you walked up the street with him?

A. I don't remember asking him how he got along; the newspapers told that.

Q. Well, it was during that time in any event, was it not?

A. It was during that time I had a drink with him, yes.

The "Algoa" already had some coal in her bunkers when the "Indra" and the other vessel began to discharge coal into her. The "Algoa," I think, has 12 or 15 hatches. She was a very big storeship. There was not, that I know of, a considerable quantity of coal in the "Algoa" in the same compartments as the other coal that was put in. Whatever holds I went into I saw were comparatively empty, but I may not have looked into all the holds. In answer to the question if I would undertake to state now that there was not a matter of a number of hundreds of tons in that vessel at the time the coal was put there, and in the same compartments, I would state there was not, so far as I could see. I was aboard the "Algoa" once or twice a day, and may be oftener when she was being loaded. I was chasing men up to trim her at the time, and working for Mr. Mills, and I was also working for the Western Fuel Company. I think she was loaded at Folsom Street, and

(Testimony of Edward Powers.)

that they were discharging into two or maybe as many as four hatches. I think there were four weighers, one for each hatch. I don't remember going down into the hold before the coal was placed there. It is my belief that the "Algoa" did not have any considerable quantity of coal in her at the time they began loading her. [864—805]

I came to Court alone this morning. I spoke to Mr. Roche and Mr. Sullivan at lunch time to-day. I had lunch with the little "Chronicle" man to-day, and Mr. Thomas Sardou was also present. During the noon hour I asked a person who I am pretty sure was Mr. Masters to carry a message to Messrs. Sullivan and Roche, that I had been in conference with Mr. McNab, and had told Mr. McNab something concerning the case, and that they should send down to Mr. McNab to see if that was the truth. There was some gumshoe men standing around when I gave this message.

Further Redirect Examination by Mr. ROCHE.

I do not see any of these gumshoe men around now. They are in and about all the time.

The Government weigher located on a barge at the time the barge is discharging coal into a vessel does not have anything at all to do with the rapidity with which the tubs are hoisted from the hold of the barge to the bumper above on occasions when the coal is not being weighed. The Government weighers do not have anything to do with the duration of time during which the tubs are permitted to remain in the hold

(Testimony of Edward Powers.)

or with the rapidity with which the men in the hold shall work.

Further Recross-examination by Mr. McCUTCHEN.

Mr. McCUTCHEN.—Q. Mr. Powers, you were asked by Mr. Moore on your recross-examination whether you had sent a message at any time since you went off the stand yesterday to Messrs. Sullivan and Roche, or to Mr. Tidwell, and you answered first that you had not. A. Not that I remembered of, I said.

Q. Do you remember the time the Court adjourned this morning? [865—806]

A. I believe around 12.

Q. And it is now slightly after 3 o'clock; do you want us to understand that when you made that answer to Mr. Moore you had forgotten that within two hours of that time you had requested Mr. Masters to take a message to Mr. Roche and Mr. Sullivan?

A. That had slipped my memory, yes, sir.

Q. It had slipped your memory; did you also remember, at the time, at the time you made that answer to Mr. Moore, or I mean, had you also forgotten that you had requested some one to go to Mr. McNab?

A. I told them if they would go to Mr. McNab, Mr. McNab would tell them what I said, yes, sir.

Q. Mr. Powers, my question was whether when you made that answer to Mr. Moore you had also forgotten you had requested someone to go to Mr. McNab?

A. That had slipped my memory, yes, sir.

Q. Did it slip your memory, or did it occur to you that it might be embarrassing to admit that you had

(Testimony of Edward Powers.)

sent a message to Messrs. Roche and Sullivan or to Mr. Tidwell?

A. It is not embarrassing to me if I sent a message to them concerning the truth.

Q. You have a pretty good memory, have you not, Mr. Powers? A. I have a fair memory.

Q. You have testified with considerable particularity to interviews and conversations that took place several years ago, have you not? A. I have.

Q. And do you wish us to understand that you were somewhat in doubt when Mr. Moore put that question to you as to whether you actually sent a message to Messrs. Roche and Sullivan?

A. That slipped my memory, yes, sir.

Q. I mean by Mr. Masters? [866—807]

A. It had slipped my mind, yes.

Q. It was not recalled to you until Mr. Moore asked you whether you had sent a message to one of these gentlemen by somebody? A. It was not.

Q. And you recalled that you had made such a request of several people out in the hall?

A. I had spoken to several people concerning it in the hall, and I had spoken to them down in the restaurant also, the "Chronicle" man and Mr. Sardou and a few others.

Q. Had you requested them also to take messages to Messrs. Sullivan and Roche or to Mr. Tidwell?

A. I don't remember; I may have.

Q. You may have? A. I may have.

Q. Are you in doubt about that?

A. I have answered the question.

(Testimony of Edward Powers.)

Q. I say, are you in doubt about that?

A. I have answered the question.

Q. Is your recollection at all hazy as to whether you requested those gentlemen to take messages to Messrs. Sullivan and Roche, or to Mr. Tidwell?

A. I have answered the question.

Q. And is that the only answer you can make?

A. I have answered the question.

Q. Is your recollection also in doubt as to whether you requested them to take messages to Messrs. Roche and Sullivan, or to Mr. Tidwell?

A. I was speaking to them about the case, and I don't know whether I requested them to do so or not.

Q. Did you request anyone other than Mr. Masters to do so? A. I may have.

Q. Did you request anyone other than Mr. Masters to take a message [867—808] to Mr. Roche and Mr. Sullivan, or to Mr. Tidwell?

A. I may have.

Q. Who was the person?

A. I was speaking to different people.

Q. Name them.

A. Mr. Masters and also the "Chronicle" reporter.

Q. Did you also request the "Chronicle" reporter to take a message to Mr. Roche and Mr. Sullivan, or to Mr. Tidwell?

A. He was present at the time. I am pretty sure I told Mr. Masters to take the message.

Q. Are you also equally sure that you requested the gentleman representing the "Chronicle" to take the message? A. I have answered the question.

(Testimony of Edward Powers.)

Mr. ROCHE.—Just one minute. I object to that, if' your Honor please, upon the ground that the witness has already stated what he did.

The COURT.—No, he did not. That was just the trouble. He did not state what he did; he said that he may have done so. Read the question to the witness.

(Question repeated by the Reporter.)

A. I was talking about the case and I don't remember exactly whether I did, or not.

[Testimony of D. C. Norcross, for the Government.]

D. C. NORCROSS, a witness recalled for the United States, testified as follows:

Direct Examination by Mr. ROCHE.

I recall being questioned the other day concerning a letter sent to me, as secretary of the Western Fuel Company, from the Nanaimo office of said company regarding the charging against said company of 100 tons more coal than the quantity [868—809] of coal which was specified in the bill of lading of the cargo concerned. I said that I could not give any explanation of that matter, and that I could not recall why it was done. Since that testimony I have seen a letter that I wrote in 1907 or 1908 saying that I could see no reason for the Nanaimo office continuing to follow that practice. I saw the letter referred to last week in connection with my producing under subpoena for the Government certain correspondence between our San Francisco and Nanaimo offices. I do not know how long the practice of sending such

(Testimony of D. C. Norcross.)

letters continued. I cannot now, any more than before, give the reason why these charges were made from time to time against the Western Fuel Company at this place for a greater quantity of coal than apparently was placed in these boats, according to the invoice and bill of lading. It is a fact that from time to time we received letters similar in kind to the ones heretofore introduced in evidence, from the Nanaimo office. I presume it is a fact that we received such a letter practically every time a cargo of Nanaimo coal was sent to San Francisco. I did not care what Nanaimo billed here. We paid whatever the Government weighed out of the vessels at San Francisco. I knew there was a difference between the bill of lading weight and the out-turn weight in nearly every cargo. I knew also that separate accounts were kept as to the cargoes of coal imported from British Columbia into the United States by the Nanaimo and San Francisco offices respectively.

(The attention of the witness was here directed to a number of letters relating to the same subject matter.)

These are letters received by me from time to time covering specific cargoes of coal sent from our Nanaimo office to the Western Fuel Company in California. Whether such a letter was sent with every cargo for years prior to October, 1908, I do not know. I do know that the bills heretofore referred to, showing the bill of lading weight and at the bottom what purported to be the actual weight of the various cargoes, continued to arrive with each cargo until and

(Testimony of D. C. Norcross.)

including the month of December, 1912. I cannot say as to how many of the letters which preceded said bills were sent before October, [869—810] 1908. I cannot remember a single cargo coming in before 1908 with which such a letter was not received. When these letters were not opened by me, I presume they would go directly into the hands of Mr. J. B. Smith. I do not think that Mr. Howard ever opened any mail. I recall one letter that was referred to Mr. Howard.

(The attention of the witness was here directed to a letter dated May 9, 1907, reading as follows:)

“Steamer ‘Tordenskjold.’

Please note we have charged you with 5823 tons, 100 tons more than bill of lading figures.

Yours truly,

MARK BATES, Jr., Cashier.”

At the bottom of this letter there appears in lead pencil, the following words:

“Mr. Howard, do you think this necessary?

D. C. N.”

That notation on the bottom of the letter is in my handwriting, and undoubtedly the matter was taken up by me with Mr. Howard. I presume there was a conference that I cannot remember. I believe I know something about the significance of those letters, but I am not at all sure about it.

(The attention of the witness was here directed to a copy of a letter dated November 12, 1907, reading as follows:)

(Testimony of D. C. Norcross.)

“November 12, 1907.

Western Fuel Company.

Nanaimo, British Columbia.

Dear Sirs:

In the past you have been making out bills of lading on cargo shipments to us less than the actual [870—811] quantity shipped.

There is no reason for your further continuing this, and from now on please make bills of lading upon the actual quantity shipped.

Yours truly,

Secretary. D. C. N.”

I presume I signed that letter, and either wrote or dictated it.

Q. Let me refresh your recollection by again calling your attention to some of this language: “In the past you have been making out bills of lading on cargo shipments to us less than the actual quantity shipped.” What did you mean by that language, Mr. Norcross?

A. Well, probably, if I were writing now, I would put in there, “Less than the actual quantity claimed to have been shipped.”

Q. You say, less than the actual quantity claimed to have been shipped? A. Yes.

Q. One of the copies of the notice would be sent to you from time to time, would it not?

A. With each bill, yes, sir.

Q. That is, when a cargo of coal was sent from the Nanaimo department of the Western Fuel Company to your department at San Francisco, the bill of lad-

(Testimony of D. C. Norcross.)

ing, together with one of the invoices which I understand to have been executed in triplicate was sent to your office? A. It was.

Q. And the bill of lading, and the copy of the invoice, or copies of the invoice, would reach San Francisco ahead of the cargo; that is correct, is it not?

A. Sometimes it would, and at other times they would not. As [871—812] a rule, they should.

Q. And, of course, taking into consideration your experience, you knew, did you not, at the time you received these letters, and at the time you received these various bills of lading and invoices, that the invoice weight and bill of lading weight, where there was not a split cargo on board, were the same?

A. I presume they were always, yes.

Q. Always the same; that is, where the cargo was taken on board at one port? A. Yes, sir.

Q. And, of course, you knew, did you not, that the Western Fuel Company, through its regular official or agent in fact at Nanaimo, declared the cargo before it was exported, or before the ship cleared at Nanaimo, before the American Consul, or consular official?

A. Yes, sir; to the best of his knowledge.

Q. Now, calling your attention again to the language, "In the past you have been making out bills of lading on cargo shipments to us less than the actual quantity shipped," do I understand you to now tell this jury that if you were writing that letter to-day, that instead of using that language, you would use the language, "less than the actual quantity claimed to be

(Testimony of D. C. Norcross.)

shipped"; is that correct?

A. That is just what I would do.

Q. Let me ask you this question, then, before I call your attention to another matter here: Is it your understanding that that was merely a claim being put forward from time to time by your Nanaimo office?

A. That is all it was.

Q. In other words, according to your present testimony, then, it was merely a claim that you did not understand this additional quantity to represent the actual cargo shipped? [872—813]

A. They did not know the actual weight.

Q. I am not asking you what you knew, but I am asking you if that was your understanding?

A. I say they did not know the actual weight, when they claimed to put down the weight shipped.

Q. You say they did not know it?

A. That is right.

Q. Let me call *you* attention to the next paragraph in this letter: "There is no reason for your further continuing this"—that is, the practice to which you have already referred? A. Yes, sir.

Q. "—and from now on please make bills of lading upon the actual quantities shipped"; what did you mean by that paragraph?

A. I meant that the bills should all read the same, the bill of lading and the bill for the coal, as the amount they claimed to have put in the ship.

Q. Is that the only explanation you could make of the last paragraph? A. For further continuing.

Mr. McCUTCHEN.—Just a moment. If your

(Testimony of D. C. Norcross.)

Honor please, I submit that that letter cannot mean what counsel seems to think it means, because it speaks of actual weight in two cases.

Mr. ROCHE.—It seems to me it cannot mean anything except that I think it means, and unquestionably what it does mean. Let me read this letter to you, Mr. McCutchen. “In the past you have been making out bills of lading on cargo shipments to us less than the actual quantity shipped. There is no reason for your further continuing this, and from now on please make bills of lading upon the actual quantities shipped.”

Q. Does not that mean, Mr. Norcross, and did you not, at the time you wrote this letter intend it to mean, that the bill of lading [873—814] did not contain the actual weight of the cargo shipped?

A. Did not contain the weight that they claimed they shipped, as I said before.

Q. Then let me read the next paragraph of this letter—

Mr. McCUTCHEN.—If your Honor please, I don't think that counsel has the right to argue this letter with the witness in this fashion. The letter is here and it speaks for itself. I think we all can determine the meaning of the letter in the light of the facts as they have been developed here.

The COURT.—However, the witness is entitled to give his explanation of it if he desires to.

Mr. ROCHE.—Q. Let me read you the next paragraph: “There is no reason for your further continuing this, and from now on please make bills of lading

(Testimony of D. C. Norcross.)

upon the actual quantities shipped.” Now, did you not intend, by the last paragraph of that letter, to request or direct the Nanaimo office to increase the bills of lading so that the bills of lading would correspond with the quantity of coal which the Nanaimo office claimed that was represented by the bill of lading plus the quantity specified in these letters?

A. I wanted everything to agree, the bill of lading with the bill; no less than they claimed.

Q. Will you point out in that letter—

A. (Intg.) I read it, Mr. Roche; it is a very poor letter; I have read it over two or three times, and this is the only explanation I can give to you.

Q. I would like you to point out in that letter any language which would indicate to the Nanaimo office, or any other office, or to any human being, anything which would indicate to the human mind the suggestion you have just made? [874—815]

A. I wanted them to stop the practice they were carrying on of making the bill of lading represent less than the actual amount. I admit that it is a very poor letter.

Q. Did you get any response to your letter?

A. There might have been one. I don’t know. It would be in the files if I did.

Q. Have you any recollection of having received any answer to that letter?

A. I have no recollection of it now.

Q. You know, as a matter of fact, do you not, that the practice was not discontinued, but that these bills

(Testimony of D. C. Norcross.)

were sent from time to time showing that at least they claimed that a greater quantity of coal was placed in the ships than was represented by the invoice or bill of lading?

A. I believe they continued the bills as they had before.

Mr. ROCHE.—We offer these other letters in evidence as one exhibit, as Exhibit 139.

(The letter dated November 12, 1907, was here marked "U. S. Exhibit 138," and the other letters marked as one exhibit, viz., "U. S. Exhibit 139.")

I want to call the jury's attention to one or two of these letters:

"January 19, 1907. Steamship 'Titania.' Please note we have charged you with 5592 tons, 50 tons more than bill of lading figures. Yours truly."

By the way, Mr. Norcross, it is true, is it not, that the figures in these letters, such as, for instance, "We have charged you with 5592 tons," would represent the invoice weight plus the additional charge. Let me read that letter to you: "Please note we have charged you with 5592 tons, 50 tons more than bill of lading figures." [875—816] You compared those letters, I suppose, from time to time with the bill of lading figures? A. I never looked at them.

Q. You say you never did?

A. I don't remember ever looking at them.

Q. Very well, I won't press that. The next one is August 30, 1907, 50 tons more than bill of lading figures.

The next is February 25, 1907, steamship "Tellus,"

(Testimony of D. C. Norcross.)

“Please note we have charged you with 3558 tons, 30 tons more than bill of lading figures.”

Those tons varied, did they not, from 30 tons to 100 tons?

A. About that, I think, as I notice it from those letters.

Q. Without reading all of these letters, that is the fact, is it not, Mr. Norcross?

Mr. McCUTCHEN.—Mr. Roche, I would prefer not to have the witness state that unless he has examined all these letters himself. I would rather take your statement of it subject to correction.

Mr. ROCHE.—All right, I think that is the fact.

Q. Have you now, Mr. Norcross, any recollection of having received from the Nanaimo office any letter of any kind, prior to the month of December, 1912, relating to the charging of these additional quantities of coal?

A. Nothing further than these letters that you have just put in evidence.

Q. And you have no recollection at all of having received any letter from the Nanaimo office in response to the letter which you wrote a copy of which has now been introduced in evidence?

A. No, I have not. [876—817]

Q. Have you any recollection of having written to the Nanaimo office about the month of October, 1908, or at any time thereafter, upon the receipt of these various bills of statements that have been received in evidence, upon each one of which appears to be indicated the actual quantity of coal shipped in a

(Testimony of D. C. Norcross.)

particular cargo, which quantity exceeded the quantity specified in the bill of lading or in the invoice?

A. I don't recollect it, no.

Q. And you have no recollection, as I understand your testimony, of having had any conference with the defendant, Howard, regarding these matters, or with the defendant, James B. Smith, excepting as heretofore testified to by you?

A. I presume from that letter, from that note on there, that I did have a conversation about it.

Q. But you don't recall what the conversation was?

A. No, I do not at this time.

Q. And that is true, is it not, Mr. Norcross, notwithstanding the fact that these letters have come to you from month to month, right up to almost October, 1908, and thereafter these bills have been sent to you?

A. They have come right along. I have an inkling of the reason for it, but I don't remember our discussion about it at all.

[Testimony of John W. Smith, for the Government.]

JOHN W. SMITH, a witness called for the United States and sworn, testified as follows:

I live in Oakland, and am now and have been for about six years last past a customs agent in this district. My duties are concerned with the investigation of frauds against the Treasury Department. Mr. Tidwell is my superior. I recall [877—818] on or about the 18th of December, 1912, making a trip for observations upon the steamship "Korea," then lying at pier 44. I was there from about two

(Testimony of John W. Smith.)

to four in the afternoon, and from about seven in the evening until five the next morning, with the exception of a short time off. The "Korea" was at that time taking on coal. She was being coaled by the Western Fuel Company from the barge "Wellington" on the inshore side. This last statement is in reference to the night-time. In the afternoon I think she was being coaled by the barge "Theobold" on the offshore side. I am not absolutely sure, but I think Mr. Dave Powers was with me on the afternoon trip. He was in the employ of the Government at the time as a customs agent. The situation that I observed during the afternoon in connection with the coaling of the "Korea" was exactly what I had observed previously on December 16th and 17th. I was down there then too for the purpose of observing the coaling of the "Korea." On those occasions I was accompanied by Mr. Powers. We went in the daytime only on the 16th and 17th. On the 16th we were there from about 1:30 to 5, and on the 17th from 11 A. M. until 5 P. M. On the 16th the "Korea" was being coaled from the "Theobold," as also on the 17th. Upon these three dates, the 16th, 17th and 18th, during our observations in the daytime, I stationed myself at different places on the steamer "Korea," where I could best see the coaling. I do not think I went down upon the barge. I was at one time across at the other dock, on another ship, I believe, but for a short time only. I do not recall which particular day that was. I located myself on the upper part of the steamer; part of the time on the

(Testimony of John W. Smith.)

bridge, and part of the time on the upper deck. On the first date I counted the tubs to see how many they were weighing, [878—819] the average they were taking—and they were running 56 tubs, and then weighing the next four. That was on the first date. I do not remember the name of the weigher. On the second day I did not count the tubs. The same weigher was present, I think, but I am not certain. I did not notice the number of weights that they were taking on the third day, that is, on the 18th. The tubs that were not weighed were lighter than those that were weighed. I was on the bridge part of the time, and on different places on the deck, not very far from where they were running the coal into the ship. I am not certain whether they were putting coal into the same hole during the three days. I could tell by the position occupied by me when weights would be taken. I did not make any memorandum of the rapidity with which the tubs were being hoisted. Mr. Enlow, I think, was with me, as well as Mr. Powers, during a part of the daytime, but I could not say on which day. The tubs which were weighed were in every case heaping full, well rounded out, and the tubs which were not weighed were hardly ever rounded out. To my recollection none of them were as full as the ones that were weighed. In the case of the tubs that were not weighed, the coal would sometimes be below the top of the tub. It would quite often be that way. To my recollection, though, I could not say positively none of the tubs that were not weighed were rounded

(Testimony of John W. Smith.)

out as full as the ones which were weighed. Referring still to the daytime, it appeared to me that the tubs that were weighed had more fine coal in them than the tubs that were not weighed. I was able to see the coal as it was being discharged, that is, as the buckets were being tripped. On that barge, the "Theobold," the tub would be tripped by two men being on top, according to my recollection, each of whom would [879—820] take hold of the tub and dump it. The coal is lifted from the hold to the tripping point by a donkey-engine. There is a conveyor or chute running from the barge which permits the coal as it is dumped from the bucket to fall over from the deck of the ship into the hold of the liner. I do not remember whether the chute or conveyor is covered or not on that particular ship.

On the days when the "Korea" was being loaded I was from 20 to 100 feet from the point of discharge. I was close enough to see the character of the coal, and observed its character upon occasions when coal would and would not be weighed, respectively. My recollection is that the chute was covered for a short distance, and open for the rest of the way. The coal would spread out in the chute and not go down in a lump. Some of the tubs that were not weighed appeared to be all lump coal. None of the tubs that were weighed were that way. In the coal that was weighed there was a great deal of fine coal.

I recall visiting the "Korea" on the night of December 18th. Dave Powers and Mr. Enlow, an inspector of customs, accompanied me. I reached the

(Testimony of John W. Smith.)

“Korea” about seven o’clock in the evening, and remained watching operations until about five o’clock the next morning, excepting about from 12 to 1:30, and a period around 3 or 4 o’clock in the morning when we were away from a half to three-quarters of an hour. In the period from seven o’clock at night until 12 o’clock, I was most of the time on the bridge, but I was also over different parts of the deck. The bridge was maybe 50 feet away from that part of the “Korea” where the coal was being discharged. The top of the hoist at that time was some distance above the deck in which was located the hold through which the coal was dropped into the ship’s bunkers below—I should say a distance of perhaps twenty feet. My recollection is that there were lights upon [880—821] the hoist where the coal would dump. I think there was a cluster of ship’s lights located at that point upon the hoist. They were electric lights. The coal was weighed twice between seven o’clock and twelve o’clock. Between 7 and 7:30 they were not actually discharging coal, but simply fixing the chute; so that the two weights were taken during a period of 4½ hours. My judgment is that the tubs were being hoisted more rapidly than in the daytime. Four tubs were weighed upon each one of those two occasions when the weights were taken, one after the other. I do not know where the Government weigher was located when the weights were not taken. We could not see down into the hatch of the barge—there was not light enough. I don’t remember seeing the weigher around except

(Testimony of John W. Smith.)

when they were taking weights. The defendant, Edward Smith, was around there during the early part of the evening of the 18th, but whether he was there at any other time during the three days mentioned I do not know.

On the night of the 18th, when weights were not being taken, some of the buckets were only fairly filled. Some of them, to the best of my recollection, were not half full. There were several times when they had difficulty tripping the tubs at the point of discharge. Sometimes I could not see the quantity of coal in the tubs upon these occasions when there was difficulty in tripping them. There was not enough coal in the tubs for me to see it, though I could see at least a foot down in the tub. In the daytime the tubs that were not weighed were better filled than they were at night. The tubs that were weighed in the early part of that evening, from 7 to 12 o'clock, were always well filled. I left about 12 and returned about half-past one in the morning. They hoisted coal from then right [881—822] on until about five o'clock. I only saw one weight taken during that time. The weighed tubs were well filled, and the unweighed tubs were not well filled. The situation was about the same in this regard as in the earlier part of the night, except that in the morning near five o'clock the unweighed tubs appeared to me to be better filled when they came up.

I recall visiting the "Korea" again a short time on the 19th of December. Mr. Powers was with me. They were hoisting some coal from the barge but

(Testimony of John W. Smith.)

slowly. They appeared to be cleaning up the barge.

I recall visiting the Folsom Street dock on January 13th for the purpose of observing the discharge of the steamship "Americano." I was accompanied by Mr. Dave Powers. Most of the time I was on the south side of the bunkers, on the bulkhead. That was in front of the Harrison Street dock. I could see the coal being lifted from the ship and being discharged into the hoppers or towers. I could also see the tops of the cars in which the coal was being discharged through the hoppers. I took up my position on that day about ten o'clock, and remained until a little after one o'clock. The Government weigher at that time on the dock was Mr. Thelen. He left shortly after 11:30. They appeared to stop work at that time. After Mr. Thelen left I observed that four cars were filled and run over to the scales without being stopped to be weighed. It is my recollection that it was shortly before 12 o'clock that the cars were thus filled. I could not see very well the discharge of the coal into the cars. I could hear it going into them, however. After the cars were loaded I could see them and their movement; that is, I could see the coal on top of the cars, and see the cars run out past the scales without stopping. The cars were [882—823] run westerly toward the coal shed. I am familiar with that tramway or runway extending across what is supposed to be an extension of the Embarcadero. The cars ran out westerly beyond the scales to about the middle of the street, that is, to about the middle of this tramway. I could see the

(Testimony of John W. Smith.)

tops of the cars, but not their sides. I know the cars were not stopped on the scales. After the cars reached the center of the tramway they remained there until about ten or fifteen minutes before one o'clock; then they were run back again and dumped into the bunkers. I could hear the dumping operation. The cars did not stop on the scales on their return. Mr. Thelen was not there during any of this time. I was present when he returned, which was maybe ten minutes or so after the cars were dumped. Having been dumped, the cars were run back up to the hoppers again. I cannot say positively whether I left before or after they were again loaded.

Cross-examination by Mr. McCUTCHEN.

I do not recall the name of the weigher on the "Thebold" on the occasion when I watched her discharging coal into the "Korea." On that date the tubs were weighed on an average of about four tubs in 60. I cannot say as to how many tubs were discharged in all from the "Wellington" into the "Korea" on the night that I described. The tubs are lifted very rapidly to the bumper after they leave the hold of the barge. I cannot say how long the tub would be in my view, however. I estimated that I was about 50 feet away from the place where the operations were going on. I believe that the bridge is a little above the elevation of the bumper, perhaps five feet. The light was sufficient so that I could see the contents of the tub [883—824] before it was dumped. The dumping is a very quick operation, but not as quick as the eye is. Just as soon as the

(Testimony of John W. Smith.)

tub strikes the bumper and is released, it dumps by mechanical device pretty quickly. I know I could see into the tub at least a foot though I was 50 feet away from it and only elevated, possibly five feet higher than the bumper.

On the day when the "Theobold" was discharged I estimated that I was 20 feet away from the point where the tubs were dumping. The unweighed tubs were not running so badly as they were at night-time. The weighed tubs were all well rounded out, and had a good deal of fine coal in them. I could see them dumping. That is the only way I know the character of the coal. Some of the tubs that were weighed had more lumps in them than others; but, taking them one with another I would say that they were filled with about the same character of coal and were well rounded out; that is to say, they contained coarse and fine coal. Some had more fine coal than others—very much more.

Q. Have you intended to give the impression, Mr. Smith, that all of those tubs which were weighed were filled to their greatest capacity and the coal was selected so that it would produce the greatest weight?

A. Well, I don't know but that it would weigh more with more fine coal in than it would when there was not so much fine coal, but more lump coal.

Q. Well, without reflecting on your testimony at all, Mr. Smith, and I do not intend to do that, did you not intend by your answer to create the impression that the tubs which were weighed were loaded with fine and coarse coal so that all of the voids so to

(Testimony of John W. Smith.)

speak would be filled and that the coal so weighed would [884—825] weigh as much as could possibly be gotten into a tub of that size?

A. I was not trying to create any impression, whatever, any more than what I saw.

Q. Do we understand that from your observation of those tubs they were so loaded as that the weight when recorded would show the greatest amount of coal that could be put into those tubs?

A. Well, they were pretty near as full as they could be filled.

Q. Pretty near as full as they could be?

A. And safely carried to the hopper.

Q. And the coal was selected so as to produce the greatest weight?

A. I won't say that every time it was selected; I cannot say that.

Q. Well, it may have just so happened?

A. It may have so happened.

I only saw 12 tubs weighed on the night of December 18th. It might have been that more tubs were weighed, but how many more I do not know. I was away, of course, from 12 o'clock until 1:30, and for perhaps half or three-quarters of an hour at some time later in the morning. Mr. Powers and Mr. Enlow were with me when I went away. I judged that the operation of discharging coal from the barge seemed to proceed more rapidly in the night when I was there than in the daytime. I cannot say how much more rapidly. They could work the self-dumping tubs more rapidly on the "Wellington"

(Testimony of John W. Smith.)

than the tubs which were operated by the men on the "Theobold." I did not time any of the discharges. So far as I know the coal that was being discharged from the "Wellington" was of about the same character as that which was being discharged from the "Theobold." I could on the night that I have mentioned tell a great deal about the character of the coal from watching it run down into the chute; but [885—826] I could not see it very well after it actually got into and began to run in the chute. The operation was very rapid. When there were lumps you could hear them rattle down the chute, and when there was fine coal the noise was different altogether. A portion of the chute I think was covered, so that I could not see the coal so well when it was running in the chute as when it was just dumped in. The mouth of the chute on the "Wellington" I rather think is covered. I don't think the covering extended to an elevation higher than the Captain's bridge where I was. I suppose the object of that covering is to keep the coal from falling overboard. I am not certain how near to the bumper the chute extended. I cannot tell much about the chute. I suppose the coal traveled maybe 18 or 20 feet after it reached the chute. There is only a foot or two distance between the chute and the tub as it trips. I do not mean to say that while the coal was traveling that foot or two, I could tell whether it was fine or coarse when the night operation was going on. You can see faster than the coal moves. I think I could

(Testimony of John W. Smith.)

tell whether the coal was coarse or fine. My recollection is that I could.

My recollection is that the first time I visited the Folsom Street bunkers was in November, 1912; possibly I went as early as September of that year. I went a great many times in any event. I went there when ships were discharging. I cannot remember the names of any of the ships. I think the "Dunsmuir" was one though. I cannot remember the number of times I went there between September, 1912, and the first of February, 1913.

Q. Is it not a fact, Mr. Smith, that from the 1st of September, 1912, until the 1st of February, 1913, you were keeping [886—827] tab, so to speak, for the purpose of knowing what ships were discharging at the Folsom Street dock?

A. Well, I don't remember the dates; I only know that I was keeping track of it, but I cannot give you the date.

Q. From some time in 1912, which you have heretofore said, as I understood you to have been probably a month before November, until the 1st of February, 1913, you were making it your business, were you not, to keep track of the ships which discharged coal at the Folsom Street dock?

A. Well, whenever I was instructed to go there I always went.

Q. Were you not keeping track so as to advise yourself of the ships that were discharging at that dock during that time?

A. No, I was not keeping track of it.

(Testimony of John W. Smith.)

Q. But you did frequently go there between those periods? A. Yes, sir.

Q. And you always went when a ship was discharging, as I understand you?

A. I cannot say that I always went.

Q. Did you go at times when ships were not discharging?

A. I have been there, but I did not stay there any length of time.

Q. Is it not a fact, Mr. Smith, that the purpose of your visit was to observe the method and the manner of discharging coal there? A. Yes.

Q. That having been the object of your visit there, Mr. Smith, can you not tell us whether or not you did go there when ships were discharging, and whether you went when ships were not discharging?

A. I went when ships were discharging; I don't remember of being there very much when they were not.

Q. You don't remember of being there very much when they were [887—828] not?

A. I might have been there a few times when they were not discharging.

Q. When you went there on the occasions when ships were discharging, how long as a rule did you remain?

A. Well, I haven't any track of that, I cannot remember.

Q. I suppose, without any reflection upon you, Mr. Smith, that you always approached these bunkers surreptitiously when you went there, did you not?

(Testimony of John W. Smith.)

A. Well, I went the same as I do any time when I go around the waterfront, I just went there.

There is only one stairway that I know of going to the bunkers. I went up that stairway near the street. I think the Western Fuel Company knew who I was and what my business was there. I do not know whether I was always seen by them when I went there; still, I think I was approached by the weigher on every occasion. The first time I was up there Mr. Enlow and I went up, and Mr. Mayer came down, and he knew Mr. Enlow. I believe Mr. Enlow introduced me to Mr. Mayer, but I am not certain of that.

Q. On the day that you saw this train of coal move, did Mr. Mayer see you?

Mr. ROCHE.—He was not on the bunker at that time.

A. Not that I know of.

Mr. McCUTCHEN.—Q. What is that?

A. Not that I know of.

Q. You were not on the bunker then on that day when the coal train was moved?

A. I don't think I went up at all that day. [888—829]

Q. How far were you from the bunker when you saw this operation?

A. Well, I am not good on judging distances, but I was over about opposite the other dock.

Q. Opposite the other dock; on what elevation were you? A. On the street level.

Q. When you say about opposite the other dock,

(Testimony of John W. Smith.)

can you not give the jury some impression about the distance?

A. Oh, it may have been 150 feet.

Q. What is the distance between those docks, if you know?

A. I don't know, if I did I could tell the distance.

Q. Do you know what the height of those bunkers is above the street level? A. No.

Q. Is there any railing or bulkhead or wainscoting, if you might so call it, along the sides of those bunkers where they overlook the street? A. Yes, sir.

Q. How high is that?

A. Oh, I don't know; I guess 4 feet or so.

Q. How high are the cars?

A. Well, they are higher than that.

Q. How much higher? A. Maybe a foot.

Q. How much higher was the top of the loaded car? A. You mean how much higher—

Q. (Intg.) How much higher than this railing along the side?

A. How much higher is the car than the railing?

Q. I mean the top of the load of coal.

A. You mean the coal above the car?

Q. Yes. A. Enough to see it.

Q. Enough to see it,—but you cannot give us any notion in feet or inches, I suppose? A. No.

Q. Pardon me for asking you again, Mr. Smith, but did you tell [889—830] me what you thought the height of the bunkers were above the street, that is, the level of the track?

A. I don't know how high.

(Testimony of John W. Smith.)

Q. Can you give us any impression?

A. I would only be guessing at it.

Q. Do you think they are 40 feet, or do you think it is 40 feet? A. Why, I guess so.

Q. Were you to the north or to the south of the track while this operation was going on?

A. I was at the south when they run over the scales going from the hoppers, and I was on the north side when they went back.

Q. How far on the north side were you from the operation while it was going on?

A. About the same distance, I should judge.

Q. Can you give us that distance any more correctly with reference to some monument or object that exists in that locality? A. No.

Q. Were you as far south as Harrison Street when you were southerly from the bunkers on that day?

A. I don't think so.

Q. Were you two-thirds of the way toward Harrison Street from Folsom?

A. No. I could give you the distance better by the other dock that was there; I should judge about half-way.

Q. Where were you with reference to that dock.

A. About opposite the end of it, the side of it next to the coal-bunkers.

Q. Were you standing on the Embarcadero?

A. I was standing on the bulkhead there.

Q. Were you on a line north and south with the Embarcadero? [890—831]

(Testimony of John W. Smith.)

Mr. ROCHE.—The Embarcadero does not extend down that far.

Mr. McCUTCHEN.—Doesn't it?

Mr. ROCHE.—It extends to the end of Steuart Street.

Mr. McCUTCHEN.—Q. Well, were you on a line extended southerly through the Embarcadero?

A. Well, I was about maybe 40 feet or 50 feet from the water, 40 feet maybe.

Q. Forty feet westerly from the water?

A. Yes, sir.

Q. Where were you with reference to a line drawn northerly and southerly through the scales-house on the Folsom Street bunkers?

A. My recollection is that the scales-house would be about on a line with the water.

Q. On a line with the water? A. Yes.

Q. Is it not your recollection that it is on a line easterly from the water?

A. I think it is about on a line, according to my recollection of it; I may be mistaken in that.

Q. With reference to the scales-house, you were 40 or 50 feet westerly from that line, and 150 feet southerly—

A. (Intg.) I did not stand in the same place all the time.

Q. Well, I am trying to get at from what position you saw that operation?

A. I was around in that locality, the best place I could get to see it.

Q. The best place you could get to see it, and the

(Testimony of John W. Smith.)

best place you could get to see it was at a point 40 or 50 feet westerly from a line drawn northerly and southerly through the scales-house, and 150 feet southerly from the bunkers; is that correct?

A. Around in that part there, and without going up in the bunkers, [891—832] and I did not want to do that.

BE IT REMEMBERED that thereupon the following testimony was given and that the following proceedings occurred.

Q. Do you know the name of the ship that was discharging at that time? A. On January 13th?

Q. Yes. A. The "Americano."

Q. Do you know whether that was a foreign or an American ship? A. I believe it is a foreign ship.

Q. Do you know whether she was represented at that operation by her captain, or by a clerk of the ship?

Mr. ROCHE.—That question is objected to as not being proper cross-examination.

Mr. McCUTCHEN.—He has told about the operation, your Honor, and about what was done. If he does not know it I don't care to press it.

Mr. ROCHE.—Of course, in the very nature of things he could not have known it, but irrespective of that, may it please the Court, it is not proper cross-examination.

The COURT.—The objection is sustained.

Mr. McCUTCHEN.—We except.

Q. Was the scales-house within your view at that time? A. Yes, sir.

(Testimony of John W. Smith.)

Q. Do you know whether anyone was in the scales-house at the time when this coal train passed over the scales, as you have said?

A. I would not be absolutely certain, because it is hard to be sure whether there was somebody in there or not from that point.

Q. From your position do you wish to be understood as saying that it was not possible for that coal to be weighed either as it passed [892—833] over the scale again going westerly, or as it passed over the scale again going easterly?

A. It was not possible to weigh it.

Q. It was not possible? A. No, sir.

Q. Where was that train of coal when it began to move after you saw Mr. Thelan had left the bunkers?

A. When it began to move?

Q. Yes, when it began to move to the west.

A. Well, it filled at the hoppers and then went on.

Q. From the time it filled at the hoppers until it stopped at a point, as I understand you, about midway over the street, was it within your view all the time?

A. All the time with the exception of the time that I went along the street to get over to where Mr. Powers was, and I could not see it then.

Q. Where were you at the time the coal train began to move from under the hoppers?

A. On the south side.

Q. You were on the south side? A. Yes, sir.

Q. And did you remain on the south side until the train came to a stop, at about midway of the street?

(Testimony of John W. Smith.)

A. Yes, sir.

Q. And could you see the train during all of that time? A. Yes, sir.

Q. It was not out of your view during a fraction of a second during that operation?

A. No, sir, it was not.

Q. You are quite positive of that, are you, Mr. Smith?

A. I am positive that I could see it all the time, either between the cracks or on the top.

Q. What portion of it could you see?

A. I think I could see the top of it all the way; I am not absolutely certain of that. I could see the train moving along. [893—834]

Q. But you know that it was within your view during every fraction of a second of that time?

A. I know I could see it all the time.

I have seen the operation of weighing on the Folsom Street bunkers; it does not take more than a quarter of a minute to weigh a trainload of coal. Mr. Thelen, I presume, came down stairs from the scales-house. I did not know him to be Mr. Thelen. I do not recall that I saw him before that day. I could see that someone was in the scales-house, but not to recognize him. I know there were two men in the scales-house that day. Whether there were more I could not say.

Mr. McCUTCHEN.—Q. I call your attention to Defendants' Exhibit "C," and ask you if you recognize it as a photograph of a part of the Folsom Street bunkers. A. Yes.

(Testimony of John W. Smith.)

Q. I call your attention to a structure with a door and a window in it represented in that photograph; do you know what that is? A. No.

Q. You do not? A. No.

Q. Do you know whether immediately to the south of the scales platform on the southerly track there is a structure? A. I think there is.

Q. And yet you could see that trainload of coal every fraction of a second from the time it started to move westerly until it stopped at a point about midway of the street, could you.

A. My recollection is that I could.

Q. What is your present recollection on that subject, after having looked at this photograph?

A. I do not mean to say I could see all the train.

[894—835]

Q. Do you mean to be understood as saying that you could see any part of the train when it was passing that structure to which I have just called your attention?

A. I could not see through the structure, but then I could—

Q. (Intg.) Then you could what, Mr. Smith?

A. I don't think that structure is as wide as the train is long.

Q. Now, I call your attention to another photograph marked Defendant's Exhibit "F" and I call your attention to a structure in front of which the coal train is halted; do you know what that is?

A. That is the thing that runs the cars.

Q. This structure runs the cars, the structure to

(Testimony of John W. Smith.)

which I am pointing, and in which there is a door?

A. I don't know anything about that.

Q. You don't know anything about that?

A. No.

Q. Do you recall now that there is such a structure there? A. Yes.

Q. I also call your attention to a portion of this photograph which, if I am correct, shows the top of the bulkhead to which I called your attention awhile ago; now, do you wish to be understood as saying, Mr. Smith, that at a distance of 150 feet southerly from this bunker, and at an elevation 35 feet lower than the bunker you could see that ore train for every fraction of a second?

A. Why, certainly. This is higher than the bunker. Here is the top of the car. This is what carries it.

Q. Yes, that is quite correct; this is the locomotive. I am asking you if at a distance 150 feet, and at an elevation 35 feet more than the ore train was, you still say you could see that ore train for every fraction of a second from the time it started to [895—836] move until it halted over the street?

A. I could see it from the distance where I was.

Mr. ROCHE.—In the photograph, Mr. McCutchen, shown—

Mr. McCUTCHEN.—Now, Mr. Roche, please don't.

Mr. ROCHE.—All right.

Mr. McCUTCHEN.—Q. Do you know now, Mr. Smith, what is immediately in front of that little

(Testimony of John W. Smith.)

house or shed to which I just called your attention, and immediately north of it?

A. No, I don't. I think it is only the fence there.

Q. That is to say, is it your recollection that immediately north of this small structure to which I have called your attention there is a fence?

A. Immediately north?

Q. Yes.

A. I don't know what is immediately north; I don't just get the directions.

Q. You know the points of the compass, of course; you know that the Embarcadero runs north and south?

A. I would not be absolutely certain of the points of the compass down there.

Q. Well, let us assume for the purpose of our discussion of the subject, that the Embarcadero does run substantially north and south. I don't know but what you are right about that; I don't know that that street does run due north and south. You know that one of those tracks down there is called the northerly track and that one is called the southerly track—I mean the tracks on the bunker, or do you know that? A. No, I didn't know that.

Q. You didn't know that? A. No, sir.

Q. You know that there is a track over which the hoppers are located and into the cars on which track the hoppers discharge; you know that, do you not? [896—837]

A. Yes, there is a track north and south of the track that the hoppers run on.

(Testimony of John W. Smith.)

Q. Now, then, I ask you this: Following the southerly track west of it until you reach a point immediately opposite this structure to which I have just called your attention in the photograph, what is in front of that structure? A. I don't remember.

Q. Do you know where the scales platforms are?

A. Yes, sir.

Q. Tell the jury where those platforms are.

A. The Government scale is on the southerly track —the south track.

Q. The Government scale is on the southerly track? A. Yes, sir.

Q. Is there another scale on the northerly track?

A. I am not certain but I think there is now.

Q. You think there is another scale there?

A. Yes, sir.

Q. Is it not a fact that the scales platform, that is to say, the platform on which the coal train rests when the coal is being weighed, is immediately in front of this structure to which I have called your attention?

A. Well, if it is I could always see the cars when they were being weighed.

Q. That is not an answer to my question, Mr. Smith. You are not prepared to say whether the scales platform is immediately in front of that structure, are you?

A. I think it is, but I could always see a portion of the cars when they were being weighed, I kept in that position. [897—838]

(Testimony of John W. Smith.)

BE IT REMEMBERED that thereupon the following testimony was given and that the following proceedings occurred:

Q. Were any of these visits which you say you made to the Folsom Street bunkers made at night?

A. Not on the coal investigation.

Q. What is that?

A. Not on the Western Fuel investigation.

Q. Were any of the visits which you made between the 1st of September, 1912, and the 1st of February, 1913, made at night?

A. I was down there one time in the evening with Mr. McNab and others.

Q. Well, were you there on any other occasion at night between those dates?

A. Well, I am around the waterfront so much at night that I don't know. I might have been around in that vicinity.

Q. Did you go there with Mr. McNab between the 1st of September, 1912, and the 1st of February, 1913, at night?

A. No, not at night; we were down there one evening, I don't remember when it was.

Q. Did you go on to the bunkers on that occasion?

A. We could not get in, I believe.

Q. Was a ship discharging them?

A. Not when we were there.

Q. Can you state how many times approximately on the occasions when you visited those bunkers or went in the vicinity of the bunkers, you went on the bunkers rather than stationing yourself in the neigh-

(Testimony of John W. Smith.)

borhood somewhere?

A. How many times I went up on the bunkers?

Q. Yes.

A. Well, I went there with Mr. Enlow once, and I went there at another time with Mr. Selvage and a photographer. [898—839]

Q. You went there with Mr. Selvage and a photographer after these indictments were found, did you not? A. Yes, sir.

Q. I am speaking of the occasions when you made visits between the 1st of September, 1912, and the 1st of February, 1913.

Mr. ROCHE.—That is, to the bunkers themselves, you are talking about?

Mr. McCUTCHEN.—Yes, to the bunkers themselves.

A. I don't think I was up there after that one time with Mr. Enlow.

Q. When do you think that was?

A. I am not certain, but it might have been September or October, or somewhere around in there, or it might have been later.

Q. Then on every other visit you made you stationed yourself somewhere in the vicinity of the bunkers? A. Yes, not on the bunkers.

Q. On the occasion of your other visits to that locality, where did you station yourself for the purpose of observing operations?

A. Well, no place in particular; wherever I could get the best view. That was always the case.

Q. Were you always accompanied by someone else

(Testimony of John W. Smith.)

on the occasion of those visits?

Mr. ROCHE.—Just a minute. We object to this now, may it please the Court, upon the ground that it is not proper cross-examination, as well as being immaterial.

The COURT.—The objection is sustained.

Mr. McCUTCHEN.—We note an exception.

Q. Is there any circumstance that will enable you to fix any more definitely than you have the date of your visit in the evening with Mr. McNab to the bunkers or to the vicinity of the [899—840] bunkers? A. No, I could not.

Q. Was it while your investigation was going on?

A. My recollection is it was after the indictments were drawn.

Redirect Examination by Mr. ROCHE.

Mr. ROCHE.—Q. And upon that occasion, Mr. Smith, as I understand it, you found the door locked, and neither you nor Mr. McNab gained access to the bunkers? A. We did not.

Q. Upon the occasions when you went down to the Pacific Mail Dock, that is, while the “Korea” was coaling, you went there for the precise purpose of making observations, did you not? A. I did.

Q. And in relation to the observations you have already testified to? A. Yes, sir.

Q. As I understand your testimony on cross-examination, with the exception of the time you went with Mr. Selvaige to visit the bunkers, accompanied by a photographer, you only went there upon one other occasion? A. That is all I remember at all.

(Testimony of John W. Smith.)

Mr. McCUTCHEN.—That is, you mean upon the bunkers?

Mr. ROCHE.—I am talking now of about on the bunkers.

Q. And upon that occasion you were met by the defendant Mayer who was at that time and had been acquainted with Mr. Enlow with whom you were? A. Yes, sir.

Q. He knew that Mr. Enlow was an inspector?

A. Yes, sir.

Q. One other question along that same line: Upon other occasions when you visited the vicinity of the dock you stationed yourself at various localities on the dock itself? [900—841]

A. Wherever I could see the coal cars weighing to the best advantage.

Q. And so far as the discharge of coal from the chutes attached to the hoppers into the bunkers below, or anything of that kind, of course those matters were not within your observation, if they occurred?

A. No.

* * * * *

Q. You were being examined concerning some photographs by Mr. McCutchen, for the purpose of showing what you could not see. I call your attention to a photograph marked Defendant's Exhibit "A," and ask you to look at that photograph and state whether this photograph does not show with some degree of certainty and exactitude exactly what you could see upon the occasion to which you refer when this trainload of cars was run over mid-

(Testimony of John W. Smith.)

way in the street and upon this tramway. Just look at that photograph. A. Yes, sir, I could see that.

Q. Now, I call your attention to the tramway, and ask you if in this photograph you can see the top of the coal cars stationed upon the tramway, together with the head and shoulders of the man who was located upon that train?

A. Yes, sir, I can, and the train is wider than this building here.

Q. And can you also see the structure in this photograph to which Mr. McCutchen attracted your attention on cross-examination and as to which he cross-examined you at length? A. Yes, sir.

Q. I will ask you if it is not a fact that two cars instead of four cars contained in a train—I will withdraw the question in that form and put it in this form: Is it not a fact that if [901—842] there were only two cars in one of these trains that you could see portions of the two cars as the cars were passing that structure?

A. Yes, sir, the back of the train right here, always.

Q. And this photograph likewise shows, does it not, the fence which is located upon the south side of the bunker? A. Yes, sir.

Q. And you notice, do you not, in this photograph, that the fence between the shoreline and the offshore end of that bunker is not as high as the fence which is located upon the south side of the tramway?

A. No, it is not.

Mr. ROCHE.—I would just like to show this to the

(Testimony of John W. Smith.)

jury, and I would like to call the jury's attention to the cars located upon the tramway, with the head of the man who was either located upon or who was operating that train. I would like to ask the jury at this time to compare the fence on the south side of the tramway with the fence located on the south side of the dock itself, or the south side of the bunker. I want to direct the jury's attention to this structure that Mr. McCutchen was directing the attention of the witness to in the larger photograph.

This is the structure that Mr. McCutchen was examining the witness about (indicating).

Q. That photograph shows the south side of the dock and the bunker? A. Yes, sir.

Q. And the south side of the tramway?

A. Yes, sir. I was with the photographer when he took it.

Mr. ROCHE.—I would like the jurors to compare the fence on the south side of the tramway with the fence on the south side of that bunker. [902—843]

Q. I call your attention to another photograph, Defendant's Exhibit "B," and ask you if you recall that that photograph represents the north side of the bunker and the tramway? A. Yes, sir.

Q. That is, looking from the north in a southerly direction; is that correct? A. That is correct.

Q. And that correctly represents the fence which is located upon the top of the north side of the bunker and the fence located upon the north side of the tramway? A. It does.

Mr. ROCHE.—I would like to direct the attention

(Testimony of John W. Smith.)

of the jury to that photograph also at this time. That is the north side of the bunker and the tramway.

Q. That shows the stairway, does it not, by means of which you gain access to the bunker above?

A. Yes, sir.

Q. How long, Mr. Smith, were you stationed on this bulkhead, or in the vicinity of the bulkhead to the south of the dock and to the south of the bunker on the date to which you refer?

A. January 13th?

Q. Yes, about how long?

A. I went there about 10 o'clock.

Q. Between 10 o'clock and half-past 11, or about half-past 11, when you met the weigher, Thelan, coming down the stairs, were cars containing coal weighed? A. Up to that time do you mean?

Q. Yes.

A. Well, up to about 11 o'clock, or 11:30.

Q. So that between 10 and 11 o'clock on that morning you did see a number of cars containing coal weighed? [903—844]

A. Between 10 and 11:30, yes, sir.

Q. And when those cars would reach the scales, can you state whether they would stop?

A. Yes, all of them.

Q. Did you talk with Mr. Thelen after he left the dock?

A. No, I was not close enough to speak to him.

Q. But you saw him? A. I saw him.

(Testimony of John W. Smith.)

Recross-examination by Mr. McCUTCHEN.

Mr. McCUTCHEN.—Q. Were the hoppers within your view during the time you were stationed to the southerly and to the northerly of the bunkers on that day? A. Yes, sir.

Q. You could see the hoppers, could you?

A. Well, I suppose you call that hoppers, yes.

Q. Well, you haven't any doubt about what they are? A. No.

Q. Did you see any coal discharged from the hoppers into the bunkers without going into the cars?

A. From my position I could not see the coal going into the cars on account of the fence. I could not positively say I could see it going in, I could hear it going in, I could hear it dumped, I could hear the coal going in.

Q. Into the cars? A. Into the cars, yes.

Q. During the time that Mr. Thelen was absent on that day did the operation of discharging the ship continue—that is to say, did they continue to discharge coal into the hoppers?

A. I think they stopped at about 11:30 apparently. They may have run up a few tubs after that, but very little.

Q. But it is your present recollection that the whole operation ceased at 11:30? [904—845]

A. I would not say but that they run up some tubs of coal after that.

Q. But you haven't any present recollection of that? A. I think they did.

Q. Well, at any rate if they did, you think they

(Testimony of John W. Smith.)

ran up very few? A. Very few, yes, sir.

Q. That is to say, is it your present recollection that some tubs may have been run up after you saw this coal train moved?

A. They might have been.

Q. But you have no recollection on that subject?

A. I would not positively say. I believe they were clearing up the ship.

[Testimony of Joseph Waterdoll, for the Government.]

JOSEPH WATERDOLL, a witness called for the United States and sworn, testified as follows:

I now live and have lived in San Francisco all my life. My general occupation is butcher. I have also been an electrician and a motorman. I have worked for the Western Fuel Company, entering the employ of that company, I guess, in 1905. Immediately prior to that time I was employed by the Dunsmuirs as a motorman on Folsom Street. I am acquainted with the structure known as the Folsom Street bunkers. As a motorman I was employed on the run on those bunkers. I operated a train of four cars, which were used for the purpose of bringing coal from one point on those bunkers to another point. I am familiar with the scales-house located upon those bunkers. I was employed by the Dunsmuirs for going on eight years, before I began working for the Western Fuel Company. When the [905—846] Western Fuel Company took over the bunkers my employment went right along with them. The runway on the bunkers, of which I have spoken,

(Testimony of Joseph Waterdoll.)

was maintained by the Dunsmuir people. When the Western Fuel Company took over the bunkers they took up the plans to make more room for coal. Previously there had been planking on the inside of the bunker. I am familiar with the location of the tracks on top of the bunkers. The bunkers were floored on the inside and underneath the hoppers in the time of the Dunsmuir. That was a solid flooring. After the Western Fuel Company took possession of the bunkers, they took away this permanent decking or flooring to which I have referred. They took it away and left the top of the bunkers open. Before the decking or flooring was removed, if coal dropped down from the sides of the cars, as the cars were being loaded, it would lie on the platform. I was employed by the Western Fuel Company for going on six years as a motorman. The electricity was supplied by an overhead trolley during the time of the Dunsmuir. The Western Fuel Company continued to use the overhead trolley during a period of four months; then they resorted to the middle rail. The planking had been taken up, however, before the third rail was installed. As motorman it was my duty to dump and run the motor at the same time. The motor which I ran conveyed cars from various points along the dock and about the bunkers to the scales-house and back again over to the yard on the other side of the tramway. I am familiar with the runway or tramway extending across the street into the yards of the Western Fuel Company.

I know the defendant, Eddie Mayer, and have

(Testimony of Joseph Waterdoll.)

known him ever since he came in contact with the Western Fuel people on the Folsom Street bunkers. He was not employed by the Dunsmuir before the Western Fuel Company took charge. He was a boss up there; he was boss and weigher, both. He was my boss, and he was boss of the other motormen employed by the [906—847] Western Fuel Company, and all the men working upstairs, except the engineer. He gave instructions and directions to the men. I am familiar with the place upon those bunkers where coal was discharged after it was weighed. Those hoppers or towers into which the coal would be discharged would practically always be located over the inshore bunker. When coal was discharged into these cars and brought over to the scales and weighed, it would sometimes be carried to the pockets of the offshore bunkers and sometimes to the yard pockets. I got my instructions where to discharge coal from Mr. Mayer. He would indicate to me which particular pocket of the offshore bunker to put the coal in. I would follow the instructions given me by Mr. Mayer. The pockets of the offshore bunker were open. I frequently personally filled the first two cars in my train with coal. My dumper would fill the other two. The cars would be filled by hydraulic. I would stand on the side of the car and catch hold of the lever and turn it, and the weight goes up and the gates comes down. When I would want to stop the flow of coal I would shut off the conveyor. If the hopper gets away from me, she would be liable to bury my car. That is,

(Testimony of Joseph Waterdoll.)

the weight would take too much of a run on the gate, and she would overflow; you couldn't pull up the gate quick enough. That occurs quite frequently. The coal would then roll off the car and down into the bunkers underneath. If we could help ourselves we did not try to overload the cars. It is pretty hard to say how often they would be overloaded. It is hard to answer; it occurred frequently off and on. It would occur more than twice a day on my train, more than four or five times a day I should say. The bunker into which the coal would fall when the cars would be thus overloaded would be the [907—848] inshore bunker. It sometimes occurred that I would receive a partial load from one of the forward hoppers, and then would have to back the train down to another hopper to complete the filling. The bottom of the cars is shaped like an inverted "V." The cars are discharged by a door with a rope on each side which you pull. That permits the coal to fall down and slide off the car. I saw those cars being discharged before they went on the scales; not quite often, however. I received instructions from Mr. Mayer to do that. It was not possible for the weigher being seated in the scales-house on the Folsom Street dock to see beyond the first hopper, even if he turned and looked in an easterly direction, that is toward the offshore end of the dock.

If we had an overload on one car, we could not get on the scales with that load on account of a bog beam that lies across and the danger of breaking down the scales; so that we would open one side of the

(Testimony of Joseph Waterdoll.)

and the coal would drop down into the bunkers. I never received any instructions from the defendant Mayer to run these cars backward from one of the forward hoppers and discharge the coal without its being weighed.

I have said that the ordinary train upon the Folsom Street bunker consisted of four coal cars. When I first commenced to work for the Western Fuel Company the motorman stood in front of the cars. That had been the practice before that date also. There would be two dumpers upon a train located between the two cars they were supposed to dump, so that there would be one dumper between the first two cars and the other dumper would be between the last two cars. Two trains were ordinarily run upon the Folsom Street bunkers. If they were hoisting very fast they would sometimes throw in two extra cars, [908—849] so as to keep the hoppers empty. That would make a trainload of six cars, but they would not have an extra dumper. The two dumpers would take care of the whole six. After the Western Fuel Company took charge of the Folsom Street bunkers they took one dumper off each train, and I then took my station between the two cars instead of at the head of the cars. I would operate the train by a controller. Thus, I would take the place that was formerly occupied by the dumper that was let out. In addition to operating the train, I would then be dumping for the first two cars. I received instructions from the defendant Mayer to dump a car into the bunkers before it would

(Testimony of Joseph Waterdoll.)

reach the scales. I did that. It is pretty hard to say how often. I never kept track of that matter. It was certainly done more than once. I never noticed that done with the other train—I was too busy taking care of my own train.

I know of the beam that lies across the bunker and underneath the scales-house. I have seen that beam come in contact with coal upon the cars. I would myself throw off some of the coal so it would not strike the beam, because otherwise there would be danger of breaking down the scales. During the time I was working for the Western Fuel Company the scale was interfered with by reason of that beam coming in contact with the lumps of coal. When coal would strike that beam it would fall down between the cars. When I would shovel coal off the top of the cars to prevent it coming in contact with the beam, the car would not have gotten underneath number one hopper. Each train would take care of two assigned hoppers. I could not say how often it would occur during every week that I would open a chute attached to one of these towers, and the chute would remain open so that the coal would continue to drop along the sides of the car and into the bunkers below. It would not occur every day. Sometimes it would maybe occur more than once upon a particular day. I [909—850] have myself shovelled coal that would fall from the cars into the bunkers below, and have seen other men doing it. I remember the time when planks were placed temporarily under these hoppers. When the bunkers would

(Testimony of Joseph Waterdoll.)

be kind of full we would take the planks away. Sometimes I saw that temporary decking removed. I remember that upon occasions inspectors in the employ of the Government would visit that dock. I never received any instructions from the defendant Mayer in connection with such visits. In relation to the inspectors, Mr. Mayer would come down and say, "Cheese it, Joe! Look out for them; there is an inspector coming up the stairs." This temporary decking would be taken out at various times during the process of discharging a ship in order to make more room so that they could dump underneath the hoppers. The temporary decking would be placed on the sides when, it would be taken up, that is against the bulkhead or fence. I used to load from hoppers numbers one and two, and sometimes from numbers three and four. If my car was overloaded, I would pull the rope and let half of it go into the bunker below and then load her up again.

Q. Why would you do that?

A. I did not want to hit the top of the beam and break the scales. I never, under the instructions of any body, after I loaded by train moved it backwards. At the request of Mr. Mayer I discharged a train load of coal into one of the pockets or compartments of the inshore bunkers without bringing it on the scales.

Cross-examination by Mr. McCUTCHEN.

I live in San Francisco at 1312 Valencia Street, and have a wife and seven children. Within the last ten days I have been away from home two nights down

(Testimony of Joseph Waterdoll.)

at Colma. I first knew that I was to be a witness in this case about three weeks [910—851] ago. Two men came up to my house who I suppose were Government officials. The name of one of them was Plummer. I first saw these two men day before yesterday, because I was away when they came up to my house before. I know the Powers boys, but have not talked to them about this case. Last night I spent over here in a hotel. The Government officials put me there. They locked me in and put the key in their pockets. I did not know that they were going to lock me in when they took me there. They did not ask my permission. It was three days ago that I first met these men. They told my wife that they wanted me as a witness in this case after I had skipped out. I surmised what they wanted me for. They left me in the hotel from eight o'clock in the evening until seven o'clock in the morning. Then Mr. Sullivan came to me in this building. I had not seen Mr. Sullivan up to three days ago. I was taken out for my meals by the two Government officials that "grabbed" me. I understood that I was actually under arrest, and that had been my understanding from the time they first took charge of me. I did not know how long they were going to keep me. I understood, however, that they would keep me until I testified in this case. They did not tell me what they wanted me to testify to. One of these Government officials always remained with me during the feeding hour; and when I got through he took me back to this building and put me in a room and

(Testimony of Joseph Waterdoll.)

turned the key, and I remained under lock and key in that room for the greater part of three days. They gave me a "Call" to read. They did not serve any warrant upon me, but they did tell me I was under arrest.

When a lump of coal got caught in the chute so that you could not close the gate, I always tried to close it as quickly [911—852] as possible. I did not want the coal to escape in that way, and when it did escape in that way it was entirely unintentional on my part. Nobody ever told me to allow it to escape in that way. I was told not to overload the cars, and I tried to avoid doing so. Those instructions were given to me both before and after the decking had been removed from the Folsom Street bunkers. Sometimes the chutes would get clogged more than once a day.

Since I left the Western Fuel Company my employments have been as follows: In the latter part of 1912 I engaged in the service of a man who owned a team out in the Mission, and worked for him a month and a half. After that I went up to the Union Lumber Company's plant, and remained there until June. Then I came back here, and went to work in a fruit stand. That is all the work I remember performing since I left the employ of the Western Fuel Company three years ago. My employments, therefore, have not been continuous, and have been very infrequent. I happened to leave the service of the Western Fuel Company because there was a wreck upstairs; two trains ran into one another. I was coming back and

(Testimony of Joseph Waterdoll.)

the switch was turned, and I ran into the other train. I was then dismissed, right there.

We were told both by the custom-house officer and by Eddie Mayer not to load the cars so high that the coal would come in contact with the beam in front of the scales-house. Eddie told me that, and told me that frequently. If we ran into the beam the scales would break. The reason I jumped up so quickly to close the gate when the chutes were running very freely was that I did not want to have the case overflowing, because if the custom-house officer came down and caught that running, [912—853] he would "holler his head off at me." When the custom-house inspector was not there I understood that Eddie Mayer wanted me to open the gate of the hopper and let the coal run into the inshore bunker.

Q. You did understand that? A. Yes, sir.

Q. But notwithstanding that you said on your direct examination you didn't want to allow these hoppers to become clogged under any circumstances, did you not? A. Yes, sir.

Q. Didn't you say that? A. Yes, sir.

Q. And now you say that Eddie Mayer did want you to open those gates and allow the coal to flow into the inshore bunker?

A. That was when we were going back; he would tell you to do that when going back to the pockets.

Q. What do you mean by that, by going back to the pockets?

A. There are pockets, from 1 to 22, down at the ends of the bunkers.

(Testimony of Joseph Waterdoll.)

Q. That is to say, you mean when the cars are unloading at the offshore pockets?

A. Well, I would not go back empty, I am sure.

Q. I said unloading and not unloaded at the offshore pockets. A. Yes, sir.

Q. Those offshore pockets are to the extreme easterly end of the bunkers, are they not? A. Yes, sir.

Q. And the inshore bunkers are to the westerly end of the wharf, are they not? A. Yes, sir.

Q. Now, I will ask you again: did you understand from the instructions given to you by Eddie Mayer, that he wanted you to open the gates to the hoppers and allow the coal to flow into the inshore bunkers without being weighed?

A. He never said the hoppers, he said the cars.
[913—854]

Q. He did not say the hoppers? A. No.

Q. Then when you said a few moments ago he did want you to open the gates of the hoppers to allow the coal to flow into the inshore bunkers, you were mistaken?

A. No, sir, that would be running your car underneath to load up your cars and go back with them, back to the pockets.

Q. Who first suggested to you—well, I will withdraw that now. What do you understand by backing up after a car is loaded? A. Backing up?

Q. Yes, after a train is loaded.

A. Well, backing up is not going ahead, I am sure.

Q. The locomotive always faced the west, did it not, or as a rule it did? A. To the west, yes.

(Testimony of Joseph Waterdoll.)

Q. Then, when you say that you were never told to back up you mean you were never told to back out toward the offshore bunkers after you had loaded a train with coal?

* * * * *

A. Well, you cannot go over that way, you have to go up around the scales-house and come down the other way.

Q. That is it, you had to pass the scales-house and get on to the north track; is that what you mean?

A. Yes, sir.

Q. And in doing that you would not get out to the offshore bunkers at all, would you, until you had passed the scales-house? A. No, sir.

Q. So in that operation you would pass the scales twice—that is, you would pass the scales platform on the southerly track and you would pass the scales platform on the northerly track, would you not?

A. Yes, sir.

Q. That is correct, is it not? A. Yes, sir.

Q. And during all of that time the Government weigher would be in [914—855] the scales-house, would he not? A. Yes, sir.

Q. And those are the occasions under which and in which Eddie Mayer advised you to dump coal without having it weighed? A. No, sir.

Q. Well, what are the occasions then?

A. The occasions are when you are on the inside, when you are getting the coal out of the hoppers, he would tell you to run a train back to the pockets and dump it.

(Testimony of Joseph Waterdoll.)

Q. He would tell you to run the train back?

A. Yes, without getting weighed.

Mr. ROCHE.—That is what I meant before, Mr. McCutchen, when I made that objection.

Mr. McCUTCHEN.—Q. All of those hoppers discharged in to the cars on the same track, don't they?

A. Yes, sir.

Q. And is it customary for one train to pass another on the track while the four of them are being operated?

A. There are two tracks on the inside.

Q. There are two tracks on the inside?

A. Yes, sir.

Q. When he told you to run back to the pockets, to what pockets did he refer?

A. It is all according to what pockets the barges are taking out of.

Q. You were going to the offshore pockets then?

A. Yes, sir.

Q. You were not told to dump coal into the inshore pockets? A. There are no inshore pockets.

Q. Inshore bunkers? A. Inshore bunkers.

Q. Those instructions related in every instance to the delivery of coal to the offshore pockets?

A. Yes, sir. [915—856]

Q. And into the barges? A. Yes, sir.

Q. And you delivered a lot of coal while you were there into the offshore pockets and into the barges which was never weighed; is that it? A. Yes, sir.

Q. That was a common occurrence, was it?

A. Yes, sir.

(Testimony of Joseph Waterdoll.)

Q. And if that coal was not weighed of course no record was kept of the weight of it? A. No, sir.

Q. When you say you were told to back out to the offshore bunkers, did you always have coal on, which came from a hopper, or coal which came from the yard?

A. You had to get coal to weigh on the scales to go on the bunkers.

Q. Will you repeat that?

A. You had to go and take coal and weigh it and take it to the offhand bunkers.

Q. You had to take coal and weigh it to take it to the offhand bunkers?

A. To take it around and dump it in the offhand bunkers.

Q. Do you mean you had to take coal and weigh it in order to convey it to the offshore pockets?

A. The offshore bunkers.

Q. Do you make any distinction between the offshore bunkers and the offshore pockets?

A. The pockets and the bunkers are the same.

Q. The pockets and bunkers are the same?

A. The bunkers are wide open and the rest are only pockets; it holds about 60 tons.

Q. You draw a distinction between bunkers and pockets?

A. Yes, sir. From the end of the bunkers then come the pockets to the end of the wharf.

Q. Those are offshore pockets? A. Yes, sir.

Q. These have sometimes been spoken of as offshore bunkers. The rest of the bunker is what you

(Testimony of Joseph Waterdoll.)

coal the inshore bunker; is not [916—857] that it?

A. Offshore bunkers.

Q. Well, I don't think that is important.

Redirect Examination by Mr. ROCHE.

It was three days ago that Mr. Sullivan questioned me about this matter, but he did not see me in this building before three days ago. I remember a statement being taken down in writing as he questioned me. He is the only person who questioned me concerning what I knew about this case. He told me he wanted the truth. Nobody asked me to testify to what was not true.

I was under lock and key in this building for three days. The room is a short distance from this courtroom. When they went out they would not let me go out.

I was not served with a subpoena in this case. When these men came to my home and when I heard about this case I tried to get away. They finally got hold of me. That was before Mr. Sullivan questioned me.

(A statement was here made for the record by counsel for the prosecution that the date on which Mr. Sullivan questioned the witness was the 2d day of December, 1913. This statement was made at the request of counsel for the defendants.)

[Testimony of E. D. Enlow, for the Government.]

E. D. ENLOW, a witness called for the United States and sworn, testified as follows:

I live in San Francisco. For the past twenty-one years I have been almost continuously an inspector

(Testimony of E. D. Enlow.)

of customs in the Government service. [917—858]

I know where the Folsom Street bunkers are, and I am familiar with pier No. 42. I made a visit to said pier in December, 1912, in company with John W. Smith and David Powers for the purpose of making certain observations in connection with the steamship "Korea." I first visited that pier on December 17th, and remained there about two hours. It was the barge "Theobold" that we were watching. We went there during the afternoon. It is my recollection that we went on the steamer "Persia," in the library, on the opposite side, and looked across. I do not remember whether that afternoon I went aboard the "Korea" myself, or not. I was on the deck of the "Persia" a portion of the time. We looked out through the library window when we were there. I think I was making observations from the library about one hour. I was on the deck about 15 or 20 minutes. In that hour and 15 or 20 minutes, there was one weight taken. When in the library of the "Persia" I was, I suppose, about 100 feet from the "Korea." We were close enough to observe the quantity of coal that was being hoisted in the buckets and weighed from time to time. When they took the weight the tubs were well filled, and we saw but little lump coal in them; but when they were not weighed we saw quite a number go up that were not well filled,—a number of times, for instance, you might take a two-bushel sack of coal and empty it in the tub without making it any fuller than when they were weighed. Occasionally, therefore, there might be a

(Testimony of E. D. Enlow.)

difference of a sack of coal between the tubs that were and were not weighed respectively.

I recall visiting the steamship "Korea" again on the night of December 18th with Mr. Smith and Mr. Powers. We reached there about seven o'clock, and stayed until six o'clock the next morning. We left at midnight, however, to get something [918—859] to eat, and were away then, I suppose, for about an hour. The hoisting operations then ceased, because the stevedores were getting their lunch. We got back just about the time they started hoisting again. In the period from one o'clock until six in the morning, there was about an hour when we were not on the bridge. We were then up forward. We were investigating a little matter connected with smuggling. The rest of the time we were on the captain's bridge of the "Korea." It was at a point about 100 feet from where they were discharging the coal. I think they were discharging from the middle hatch of the barge. When I say 100 feet, I am measuring from the end of the barge to the place where they were weighing the coal. The barge was the "Theobald." I don't remember whether she had an automatic dumper, or whether men were dumping, but I do remember that there was difficulty a number of times about the tubs turning over. There was no difficulty in tripping the buckets. It was about 40 or 50 feet from the place where we stood on the captain's bridge to where the tubs discharged. There was a cluster of lights on the docks outside of pier 44, and then there was a light or two on the barge.

(Testimony of E. D. Enlow.)

I don't remember whether there were one or two lights on the barge close to where they were weighing. I don't recall any light in the vicinity where the buckets were being tripped. There were two weights taken that night between 7 o'clock and 12 o'clock; four tubs being weighed at 8:30 P. M., and four at 11:10 P. M. We reached there about 7 o'clock and we were aboard a short time before they commenced to hoist. I do not remember how long before but we did not go aboard with the crowd of stevedores. I could, from the position occupied by me on the bridge, see the contents of the tubs of coal. I noticed that when they were weighed they were well filled, and when they were not weighed there were many of them that were like in the daytime, only worse. We looked down on the tubs from where we were, and we could see down at least six or eight inches along the side of the tubs. A sack or two of coal could be poured in some of them without running over. Only one weight [919—860] was taken between one o'clock and six o'clock, when four tubs were weighed; that was at 2 A. M. The little matter of smuggling that necessitated our attention up forward occurred about four o'clock in the morning. The barge that was discharging that night was the "Wellington." The "Theobold" was the barge in daytime. From one o'clock until seven o'clock in the morning the condition, so far as the contents of the tubs were concerned, was about the same as before midnight. I was, from my position on the captain's bridge, able to determine to some extent the

(Testimony of E. D. Enlow.)

quality of the coal in the tubs that were weighed compared to the tubs that were not weighed. When the tubs were weighed they were well filled tubs; you could not see much lump coal; but when they were not weighed, we would quite frequently see big lumps of coal down in the bucket. I made some further observations for the purpose of determining the quantity and quality of coal discharged from time to time upon these barges; for instance, on January 6th, 1913, I watched the operations of the barge "Comanche" discharging into the "Siberia." Those observations were made in the daytime. I was there from one P. M. to three P. M. Weights were taken but once in that period and the quantity and the quality of the coal were about the same as I have just testified to.

On the night to which I have testified I could tell just where the Government weigher was located, but could not recognize him well. When weights were taken he came up to the middle hatch from up forward on the barge. When weights were not being taken, he would be just about where the bulkhead of the vessel would be. I remember seeing a lantern kept at that place. That was about 30 or 40 feet from the hatchway. I suppose the weigher was tallying coal. I could not, however, see him actually doing so. There were two weighers up there together.

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(Testimony of E. D. Enlow.)

Cross-examination by Mr. McCUTCHEN.

Mr. Parks was one of the weighers who was on the "Wellington" on the night when I made my observations, but I did not know the Government weigher. The latter was near the bulkhead so far as I could observe him, nearly all the time when they were not weighing. I do not remember seeing him leave the steamer or vessel. It is my impression that the weighers were sitting down up there. It was in the open, but somewhat protected. It was a very nice night in December. My best recollection is that the distance from the bridge of the "Korea" to the point where the tubs tripped was 30 or 40 feet. The bottom of the hold of the barge was just like a dark room. You could not see very far down in it. The coal was being taken from the center of the barge. The bow of the barge extended a little beyond the bridge where we were located. The hoist of the "Wellington" is about midway on the barge. I have no impression of the length of the "Wellington." It could be, I think, as much as 250 feet; and if it was, and the hoist was in the middle of the barge, then it might be that I was as much as 50 feet from the place where the tubs tripped. That is only a guess, however.

When we made our observations from the library of the "Persia," she was lying at Pier 42, moored alongside the pier. The "Korea" was at Pier 44. I guess that the distance over to the barge was about 100 feet. I think the elevation of the library floor of the "Persia" was a little higher than the eleva-

(Testimony of E. D. Enlow.)

tion of the chute into which the coal was being discharged. The library is on the deck above the main deck. The boat is rather a small boat. The library is on the uppermost deck. I would say that the top deck of the "Persia" and the top of the chute into which [921—862] coal was to be discharged would be about the same height. The tubs tripped away from us, so to speak, rather than toward us. I would guess that a few seconds elapsed while the tub was within our vision, after it appeared above the hatchway, and before it tripped into the chute. I think that it does not take more than half a minute for the entire operation of picking the tub out of the hold, the discharging of it into the chute, and the returning of it to the hold. I know that the tub rises very rapidly.

Q. Very rapidly; now, do you think that with a tub rising very rapidly, as you have described it, and dumping away from you, that you could tell very much about the capacity to which those tubs were filled, standing in the library of the "Persia," at a distance of 100 feet from the operation?

A. Yes, sir.

Q. You think you could? A. Yes, sir.

Q. And do you think you could also tell, Mr. Enlow, whether those tubs were loaded with fine coal or coarse coal?

A. I could tell the top, whether it was fine or lumps.

Q. That is to say, if you could see the top, if the tub remained within your vision long enough for you to see the top, you could tell at a distance of 100 feet

(Testimony of E. D. Enlow.)

whether it was fine coal or coarse coal?

A. Yes, sir.

Q. And that is true, equally, is it not, with reference to the tubs which were weighed; is not that true?

A. Well, the tubs which were weighed, were in your view longer than those that were not weighed; you always have plenty of time to see the nature of the coal.

Q. When you talk about the quality of the coal, you are simply referring to the quality of the coal that is at the top of the [922—863] tub, are you not? A. That is all.

Q. And you cannot tell anything about the remainder of the coal that is in the tub, either when it is being weighed, or when it is being dumped from that distance, can you? A. No, I could not do that.

I first began to visit the piers of the Pacific Mail Company in 1892. I was inspector of customs and I went down there to be assigned to duty. I did not at that time frequently go upon the barges that were coaling the liners. I first began to go upon the barges after the Pacific Mail did away with that overhead way of coaling vessels. From that time on I went down if I had a detail. I sometimes went on the barges then. I saw the way the liners were being coaled. I saw the tubs that were weighed and the tubs that were not weighed, but I was making no investigation right then. I was first detailed to make an examination of this particular matter in the latter part of 1912; it may have been in September, 1912. From September, 1912,

(Testimony of E. D. Enlow.)

up to February, 1913, I was probably a dozen times on pier 42 or pier 44 while a Pacific Mail liner was being coaled. I was not on a barge that many times. I did not always witness the coaling operations for any length of time, but I only waited a few times long enough to observe the weighing. I passed the Folsom Street bunkers many times, but went up on them only once. I have been in the vicinity of those bunkers for the purpose of observing what was going on there a few times. Steamers were discharging on some such occasions. I went there for the purpose of watching things, and I went under instructions. I believe we went down there once or twice when a ship was not discharging without instructions for investigating. I went perhaps half a dozen times between December, 1912, and April, 1913, to find steamers discharging. [923—864] A portion of my investigations took place prior to these indictments.

Q. Let me ask you this: You were carrying on your investigations rather quietly, without making your presence known, were you not?

A. Well, when up on top of the bunkers, anybody could see us there.

Q. It is quite apparent, Mr. Enlow, that when you went up on top of the bunkers and encountered Mr. Mayer, that Mr. Mayer knew you were there; that goes without saying. Now, I am asking you whether the investigation which you were making during the visits you were making down there, while these ships were unloading, were not made by you quietly, and

(Testimony of E. D. Enlow.)

intentionally made quietly.

A. I must say they were rather quiet, but as to any concealment, I don't think I was ever concealed down there; I was right out on the wharf between Folsom 2 and Harrison Street, and part of the time I was over on Harrison Street; I was never concealed.

Q. I am not reflecting upon you at all, Mr. Enlow. The point I am trying to develop from you is this: It was not your intention during those visits, to have your presence known to Mr. Mayer, or to anybody representing the Western Fuel Company, was it?

A. That is correct.

Q. Those investigations which you say you were making quietly and in the manner you have described, were all made prior to the indictments which were returned in this case, were they not?

* * * * *

A. It is my impression we made some of them since.

Mr. McCUTCHEN.—Q. What part of your investigations, [924—865] according to your present recollection, was made after the return of the indictments? I will put it in another way. How many of these half dozen visits that you made to the Folsom Street wharf for the purpose of observing the manner of doing things there were made after the finding of these indictments.

A. Maybe one or two; I don't know that we were ever sent down there, that is, detailed specially to go to the wharf and watch the discharge.

Q. That is, you don't know that you were specially

(Testimony of E. D. Enlow.)

detailed to do that after the indictments were found?

A. I don't know that I was.

Q. And is it not your present impression that you were detailed to go down there at least half a dozen times and observe the method of doing things, before the indictments were found?

A. Well, we were not specially detailed half a dozen times, but we were given to understand that in our investigations along the waterfront, that they wanted us to make somewhat of a specialty of the discharge of drawback coal, and the discharge of vessels.

Q. The discharge of drawback coal and the discharge of vessels; is that correct?

A. Yes, bringing coal from foreign ports.

Q. Were not those instructions in force for a period of at least four months before the finding of these indictments? A. That may be correct.

Q. That may be correct; and assuming that they began along about September, would you not say that you were down in the neighborhood of the Folsom Street bunkers, where you could observe the unloading of coal, at least a dozen times before the first of February, 1913?

A. We didn't go there especially for that purpose.
[925—866]

Q. I understand that, Mr. Enlow, but whether you went there especially, or not, were you not in a location down there at least a dozen times while ships were unloading from which you could observe the method and the manner of unloading?

(Testimony of E. D. Enlow.)

A. Well, if I stayed and watched long enough, I probably might have detected something, but I passed by there more than a dozen times.

Q. More than a dozen times?

A. Well, along the waterfront.

Q. And did you not report to your superior, from time to time, that ships were discharging there, and that the opportunity was afforded to see just exactly what was going on?

A. I have no recollection of that, of formal reports of that kind.

Q. I am not speaking of formal reports; you talked to Mr. Tidwell about this, did you not—I am not asking you what you told him?

A. Yes, sometimes.

Q. Do you remember that from time to time you called Mr. Tidwell's attention to the fact that there were steamers discharging down there?

A. I may have spoken about it, that such and such a vessel was discharging.

Q. But your recollection is not very accurate on that subject? A. No, not very.

Redirect Examination by Mr. ROCHE.

I was on the bunkers themselves on one occasion during this period of time. When I passed by the bunkers or loitered in their vicinity I would spend hardly a few minutes looking at the bunkers. [926 867]

Q. Did you at any time station yourself in the vicinity of the Folsom Street bunker, either under instructions or not acting under instructions, during

(Testimony of E. D. Enlow.)

the noon hour, for the purpose of observing what operations, if any, would take place during that time?

A. We did, a time or two, at the noon hour.

Q. Who was with you upon either one of those two occasions, if the occasions were more than one?

A. Mr. Smith and Mr. Powers. I think Mr. Powers was with us at one time.

Q. Did you notice anything with reference to the discharge of coal upon either one of those two occasions?

A. Well, we watched them finishing just at the noon hour, and watched the weighers leave, and the stevedores—the most of them, and sometimes they would go on discharging and filling in to the hoppers, as I understand.

Q. That is, you saw coal being discharged into the hoppers, as you understand it, after the noon hour, and after the weighers had left? A. Yes, sir.

Q. Now, from the position occupied by you upon the street level, were you able to see the mouths of any of the chutes leading from the hoppers?

A. No.

Q. You are certain about that, are you not?

A. I was over at Harrison Street when I made this observation that I have in my mind just now.

Q. You are just talking now about one observation? A. Yes, sir.

Q. When they continued discharging into the hoppers after the noon hour, or after the weigher had left? A. Yes, sir. [927—868]

Q. But, calling your attention to all of these ob-

(Testimony of E. D. Enlow.)

servations which you made from the level of the street, that is, from the docks, or the streets in the vicinity of the bunkers, were you able at any time to see what was being done upon the bunkers, themselves, provided the cars were not being operated?

A. No, you could not tell.

Q. You could not tell whether the coal was being dropped into the bunkers, or not, could you, from the street? A. No, I could not.

Recross-examination by Mr. McCUTCHEN.

I recall being there at Harrison Street only once during the whole noon hour.

The date when I made the observations at Folsom Street was January 6th, 1913. The ship there at the time was the "Drummuir," but I do not know what kind of coal she was discharging. I went down a short time before the noon hour and remained there until about one o'clock, until after the weighers returned. I think I was on the bulkhead a portion of the time, between Folsom Street and Harrison, and over on Harrison the greater part of the time. It was 25 minutes after 12 o'clock when they stopped discharging into the hopper. I did not see any coal going out of the hoppers. When I say discharging I mean that the hoist was working.

I do not know and have not known the name of the Government weigher who was on the "Wellington" the night when I was stationed on the bridge of the "Korea." I know the greater part of them but there are a number of them that I cannot recall the name

(Testimony of E. D. Enlow.)

of. I made no effort to find out his name. If I did not actually know the man, the conditions there were such that I could not have gotten a good enough view of him to identify him afterwards. The weigher that night, when the weights were taken, stood at the hatch. [928—869] I do not know that there are two types of scales on the barges, but I know that on that occasion when they wanted to take weights a couple of men had to come up out of the hold of the barge to assist in the operation. The weigher would stand near the scale. The men who were conducting the weighing would not be vertically underneath the bumper. They would be half the width of the "Wellington" and half the hatch of the "Wellington" distant from a vertical line drawn from the bumper down. In fact, they would be practically the width of the "Wellington" away from such line. I cannot recall any lights near the bumper. I think I was something near 100 feet from the weigher when the weighing operation was being conducted. From the bridge of the "Korea," where I was standing, the deck where the customs weigher was standing would be, on a guess, 40 or 50 feet distant. The bumper would be about the same distance above the deck of the "Wellington." The customs weigher was standing on said deck on the opposite side of the barge from the "Korea." My recollection is that the scales were not moved that night. It is not a fact that the light was too poor to detect them moving the scales, but simply that I did not notice that item particularly. I do recall that the

(Testimony of E. D. Enlow.)

scales were near the hatch when the weighing was going on. It appears to me that they were not over the hatch.

Further Redirect Examination by Mr. ROCHE.

I did not go down there for the purpose of paying any particular attention to the location of the scales, or whether the beams of the scales moved up or down, or whether the weights were taken on an even beam, or a rising or a falling beam. [929—870]

Further Recross-examination by Mr. McCUTCHEN.

I have no independent recollection of my observation of the "Comanche" delivering coal at Pier 42 or 44 to a liner. I only remember that from my memorandum or report to Mr. Tidwell at that time.

[Testimony of Samuel Griffin, for the Government.]

SAMUEL GRIFFIN, a witness called for the United States and sworn, testified as follows:

Direct Examination by Mr. ROCHE.

I now live and have lived all my life in San Francisco. I am a laborer or teamster, or do anything that comes along. I have recently been in the City and County Hospital. I was first employed by the Western Fuel Company after the Dunsmuirs left. I am now and for some years last past have been familiar with the Folsom Street bunkers. I would be located there upstairs, on top. I should judge that I worked six or seven years for the Dunsmuirs before the Western Fuel Company took over the property. I was located upstairs on the bunkers with both concerns. My employment with the Duns-

(Testimony of Samuel Griffin.)

mairs was only occasional. I would be employed by the Dunsmairs every time a steamer came in. I was running a motor. The bunkers were then planked, and were so planked during the entire time of my employment with the Dunsmairs. There were then three tracks on top of the bunkers during the entire time that I worked for the Dunsmairs. The power was then applied through an overhead trolley. When the Western Fuel people took charge, the electric system then in vogue was changed. They used the third rail. I guess I worked for the Western Fuel Company about three or four years off and on, that is, every time a steamer would come in. During that time they always used the third rail. When the Western [930—871] Fuel Company took charge, there was a kind of plank, I guess, about four feet wide on the tracks, for the coal coming out of the hopper, that was supposed to save the coal from going into the bunkers, and it was this planking over the bunkers, of which I have spoken, was taken out altogether. I could not say just when that was done, but I know it was considerably after the Dunsmairs left the place. When the Dunsmairs were there, if coal dropped down on top of the bunker, it could not go below; but after the Western Fuel Company took up the flooring, if coal would drop down it would go down into the bunker.

I am familiar in a general way with the location of the offshore and inshore bunkers respectively, and was familiar with them during the time to which I have referred in my testimony. My immediate boss

(Testimony of Samuel Griffin.)

when I was working for the Western Fuel Company was Eddie Mayer. There were sometimes two and sometimes three motors used there, usually two. There were four cars in a train. The bottom of a car was shaped like an inverted "V." The cars would be discharged by pulling a rope that would open the side door like wings. When I was working for the Dunsmuirs, I would be located in front of the motor. When the Western Fuel Company took charge, I would be located between the two front cars. At that time the motorman himself would act as dumper for the first two cars, and there would be a dumper for the last two. I would be located between the two cars, because I was supposed to run the motor and dump the car. There were four hoppers upon the dock. They were numbered. I am familiar with the location of the scales-house. Number one hopper was nearest to that scales-house. Number two, three and four follow in order. I am familiar with the fact that these hoppers or towers would ordinarily be located over the inshore bunkers. Each train would have particular towers to take out of. One train would take hoppers three and one, and the other two and four. The cars would be located underneath the hoppers when [931—872] loaded. I recall an occasion when temporary planks were placed around the hopper, but they were not always there. When they were taken up they would be placed alongside the hoppers. The cars would be loaded by a chute from the hopper, which would be opened by compressed air. The dumper would turn

(Testimony of Samuel Griffin.)

on the compressed air. It would depend on the dumper how full the car would be loaded before the chute would be closed. On an average there was pretty near a ton loaded on each car. Sometimes the cars would not be full and sometimes they would be overflowing. The overflow would be thrown off and would go down into the bunkers. I could not tell exactly how often I would see that. Sometimes a lump of coal would go into the chutes, and hold the chute open. Then the dumper would have to run upstairs and try to get the lump out. In the meantime the coal would come out, and what would not go down into the bunkers would be thrown in by the men. The coal would continue to flow into the bunkers until the lump was taken out, that is the fine coal would flow. Sometimes it would take from two to five minutes to do that. That would happen maybe two or three times a day; maybe it would not happen at all.

I received instructions from the defendant Mayer regarding the operation of this motor on the trains, and regarding the discharge of coal. During the street-car strike the shovelers, who were supposed to be down there at seven o'clock, did not arrive until eight o'clock. The customs-house weigher came at eight o'clock. We were supposed to be there at seven o'clock, and as soon as we would arrive we would empty the hoppers before the weigher got there. The coal that came out of the hoppers was dumped into the bunkers unweighed. I did not receive any instructions or directions from the defendant Mayer

(Testimony of Samuel Griffin.)

at any time in reference to the discharge of coal except that time. I have seen cars unloaded before the coal would be brought upon the [932—873] scales. That would be done whenever they got a chance to pull the doors open. The motorman would do that under Eddie Mayer's direction. I never pulled them open myself, but saw other men do it. I did not know of the presence of inspectors upon that dock. Eddie Mayer said when there was nobody around, "Dump the cars if you get a chance." He made that statement only once.

I am familiar with the framework of those bunkers. We were supposed to throw coal that fell upon the top of this framework or upon or near the tracks or crossbeams into the cars, but in fact they shoveled it into the bunkers. I never assisted in doing that myself, but I have seen other men do it. I suppose the planks would be placed underneath the hoppers whenever a steamer came in. Sometimes, however, they would not do that. When the temporary plank-ing was in place sometimes the overflowing coal would fall upon it. As to what became of that coal afterwards, I believe it really would go into the bunkers, but I could not tell. I believe it would go into the bunkers; they would shovel it down there. I have seen that done.

Cross-examination by Mr. STANLEY MOORE.

I am not working now. I have been laid up with rheumatism since last May. I guess it is about two and one-half years since I worked for the Western Fuel Company. Since then I have done very little,

(Testimony of Samuel Griffin.)

except a little longshoring. I am pretty sure it was 1912 that I last worked for the Fuel Company. I was discharged by Mr. Mayer.

I don't remember any beams down there under the scales-house. I have passed under the scales-house hundreds of times. The scales-house is up above the track, and when the cars come down to be weighed they go down under the scales-house and alongside [933—874] of it. I remember now there is a beam there to hold the scales up. I have seen that beam lots of times. Eddie Mayer has told me and has told the dumper not to load the cars so high as to strike that beam.

(A photograph was here shown the witness in which scales-house appears.)

I see two beams under the scales-house in the photograph. I notice one of the beams is marked as if it had from time to time come in contact with lumps of coal. It is scarred where the coal used to hit it. Eddie Mayer never told me not to overload the cars so as to strike that beam, and he might have told the dumper. I had nothing to do with loading the cars. The motorman was not supposed to load the cars in my time. The other man, who made up the crew of the train, would operate the chutes. The chutes were moved by a lever operated through hydraulic pressure. I heard Eddie Mayer tell the man who operates the chutes once or twice not to overload the cars. Once in awhile you would see a big lump of coal on top of the cars strike the beam in front of the scales-house and fall down on the ground.

(Testimony of Samuel Griffin.)

I never heard Eddie Mayer say on such occasion that he did not want the cars loaded in that way. I never heard him say that that would break the scales. In answer to the question whether I testified on direct examination that if the car was overloaded it was liable to break the scales, I would say I said nothing about breaking the scales down. I never heard anybody say anything about breaking the scales down. I never heard Mr. Mayer or anyone else say that if those cars came on the platform overloaded that the lumps of coal were liable to press and grind against the beam, and the car being on the platform at the same time that it was liable to break the scales. I suppose that if a lump hit the beam it would shake the scales-house, but I do not know. I have seen cars with lumps of coal on them strike that beam. That would not happen but once in a day, or maybe three or four times a day. I did not hear Eddie Mayer say anything about it then. When you [934—875] would get on the scales he would say that the cars were loaded too heavy, and not to load them too heavy. Once in awhile I heard him say that when the cars were overloaded. I do not know the capacity of those scales. I could not tell you whether or not the coal that is loaded on those cars is pretty close to the capacity of the scales.

BE IT REMEMBERED that thereupon the following testimony was given, and that the following proceedings occurred:

MR. STANLEY MOORE.—Q. Have you ever heard anybody say that if those cars were overloaded

(Testimony of Samuel Griffin.)

and they got to grinding against those beams, that it would break those scales?

A. No, sir, I have not.

Q. What becomes of the lumps of coal that are knocked off the car when it is loaded up so heavy and so full that lumps come in contact with the scales; is it not a fact that the lumps fall down on the scales?

A. Yes, sir; sometimes they do and sometimes they do not.

Q. They fall down on the scales, or very close to the scales, do they not? A. Yes, sir.

Q. What do you think would happen to those scales if you ran under that weigh-house and onto the scales with your cars piled so high with coal that you collided with those beams?

Mr. ROCHE.—That is objected to as calling for the conclusion of the witness.

The COURT.—The objection is sustained.

Mr. STANLEY MOORE.—We note an exception.

The purpose of the movable planks, concerning which I have testified, was to keep the coal that would fall from the cars from [935—876] going down into the bunkers below. I have testified that every time a ship came in those planks were supposed to be put under the hoppers. The hoppers have to be arranged differently along the track according to the distance between the hatches of the particular ship that is going to be discharged, the ships being of different lengths, and the difference between their hatchways varying. The planking is placed down I suppose to save the coal from going into the bunkers.

(Testimony of Samuel Griffin.)

I stated that sometimes they forget to put the planking down. In answer to the question whether it is not a fact that the time they do not put the planking down is when those bunkers are already brimming full, right up to the level of the tracks, I would say that I have never seen those bunkers thus filled up. I worked for the Western Fuel Company every time they hired me,—maybe one day a week, maybe two or three times a week. I was not during the same period working for other people. The helpers or dumpers were supposed to put down the temporary planking, I suppose. I think anyone who happened along would do that. The foreman, Joseph Burton, was supposed to move the hoppers. He worked for the Western Fuel Company ever since the Dunsmuir left, and as long as I was there. After Burton left his stepson succeeded him, and he then had charge of moving the hoppers about. Sometimes I put the planking under the hoppers. It was in general the function of the crew up on top to do that. It would depend upon how big the ship was, and how many hatches she had, whether it would be necessary to change the hoppers about for every vessel. As a matter of fact we had to change them most every time. A lump of coal would get stuck in the chute lots of times,—sometimes once in two days, and sometimes two or three times in one day. Then the coal would fall down on the track and over the third rail. We could not help it. [936—877] We would try, however, not to overload the cars, because we did not want that to happen. It was supposed to be an acci-

(Testimony of Samuel Griffin.)

dent when a lump of coal got down on the track. We always tried not to overload the cars, but sometimes the situation got the best of us. It was supposed to be an accident when that happened. I did not put the lump in the chute so that it would get caught. I have no interest one way or the other in this case. I did not try to overload the cars.

I was first spoken to in regard to giving testimony in this case when I was out in the City and County Hospital by the deputy marshals.

(It was here explained by counsel for the prosecution that the first person who saw him was Mr. Archie Johnson, the Governor's son.)

That was about a month and a half ago. There were three men together. I was served with a subpoena. I have not felt at all kindly toward Eddie Mayer for discharging me. I did no harm. He let me off and put a man in my place. He did not claim that there was good cause for discharging me. He told me to wait until there was more work. I never went back to try to get the job. I never had any trouble with Eddie Mayer in regard to sobriety. I did not have any discussions with him on that subject.

Cross-examination by Mr. McCUTCHEN.

During the last week I have been living at number 18 Ritch Street with a friend. The gentlemen who subpoenaed me never had any conversation with me, except on the subject of the subpoena. I talked to the lawyer about this case and to the Governor's son, who took my testimony out at the hospital. The

(Testimony of Samuel Griffin.)

three men saw me there together and stayed about ten minutes. [937—878]

I never dumped any coal into the cars when I was running the motor, except once in a while for a little exercise. I could not tell you how many years in the aggregate from the time I began working for the Western Fuel Company until I finally stopped working for the Western Fuel Company I actually did work for that company. I cannot recall at all when it was that I first worked for that company. I do not remember working for them as early as 1905, and I cannot remember whether I worked for them as late as 1912. I am sure, however, that I worked for them in 1910, but I cannot say whether I did after that. It may be as much as three years since I worked for the Western Fuel Company. From the time when I left the Western Fuel Company to the time I went to the hospital I never did a day's work for anybody.

Redirect Examination by Mr. ROCHE.

I remember the fire and earthquake in San Francisco. I was not working then. I worked before that for the Western Fuel Company. I was let out by Eddie Mayer about two or three years ago. Before that I was, of course, working for the Western Fuel Company and also for some other people. After I was let out I did anything that I would come across. I went to the hospital about two or three months ago, suffering from rheumatism and some other kind of sickness. I could not walk at all. For three or four months before I went to the hos-

(Testimony of Samuel Griffin.)

pital I did no work because of that fact. That is the only reason I did not work. Up to that time I worked for different parties wherever I could obtain a job.

When the hoppers are filled they would sometimes load the cars up and then open the side doors of the cars, so as to let the coal down into the bunkers below. At that time the cars would [938—879] be located beneath the hopper. That was done under Eddie's direction. No part of that coal was weighed.

Recross-examination by Mr. McCUTCHEN.

I know that sometimes there were English ships there discharging Australian coal. The practice that I have told about of the discharge of coal from the hoppers when there were no planks underneath them applied just the same to cargoes of Australian or Japanese coal as to cargoes of other coal.

Further Redirect Examination by Mr. ROCHE.

Mr. Burton worked for about a month or two as foreman after the Dunsmuir's gave up the bunkers to the Western Fuel Company. Then he was succeeded by Mr. Desmond.

[Testimony of W. L. Bunker, for the Government.]

W. L. BUNKER, a witness called for the United States and sworn, testified as follows:

Direct Examination by Mr. ROCHE.

I live now and have lived for some time in Berkeley. I am not doing anything just now, but I have been employed by the Pacific Mail Steamship

(Testimony of W. L. Bunker.)

Company from oiler up to chief engineer. I am a machinist or engineer by occupation. I was last in the employ of the Pacific Mail as chief engineer a year ago. I had been chief engineer for about six years prior thereto. The first large boat on which I was chief engineer was the "Manchuria," plying between here and Hongkong. That was voyage eleven. I made about five voyages a year. The last voyage was, I think, number thirty-six. When I first took charge of the "Manchuria" she was coaled here by the Western Fuel Company, and that continued [939—880] during all the time that I was acting as chief engineer on that boat. I signed a Pacific Mail form of bill payable to the Western Fuel Company. There were three bunkers on the "Manchuria." One was the after main bunker; the other the fore main bunker, and the third was the reserve bunker. Each bunker was subdivided into decks. They were also subdivided on the decks. The after main and the forward main bunkers were divided into the lower hold, the Orlop deck and the lower 'tween-deck. The deck below, the Orlop deck, was filled with coal like the others. The deck above, the upper 'tween-deck was called the steerage deck. No coal was put there unless sometimes in loading at Japan when we might put a little coal there. It would be through the main deck of the steamer, which is immediately above the upper 'tween-deck, that the bunkers would receive coal. The after main bunker has a capacity of 969 tons; the forward main bunker held the same; the reserve bunkers

(Testimony of W. L. Bunker.)

held 1150 tons in the hold and 575 on the deck above. That calculation is based upon 43 cubic feet to the ton, as I remember it. It appears upon the blue-print of the ship. Some take it at 42 and some at 43; naturally I took it at 43. The chief engineers on all these liners have a blue-print of the various parts of the ship in which they are interested. I am acquainted with Mr. Chisholm, the marine superintendent of the Pacific Mail Steamship Company. He was marine superintendent when I first became engineer on the "Manchuria." When I thus became engineer on the "Manchuria," we took more coal on at this port than we did subsequently. We took the principal quantity of her coal at Nagasaki, Japan. During the earlier stages of my handling the "Manchuria," a considerable quantity of coal was taken on in San Francisco furnished by the Western Fuel Company. I recall finding a shortage in the coal. There was one occasion when I wrote a letter about it, namely, voyage 18. [940—881] I do not remember getting any instructions to put in a report in writing. Naturally I believed there was a shortage on that occasion or I would not have written the letter. I was employed, body and soul, by the Pacific Mail Steamship Company at that time, and the report was made in my capacity as chief engineer on the liner "Manchuria."

Q. Had you upon other occasions made complaints regarding alleged shortages in coal?

A. Well, I don't remember of ever making them officially any more than to always kick for more

(Testimony of W. L. Bunker.)

coal, sometimes when I was not sure of it, but on general principles. I was working for the Pacific Mail, and if I even had a suspicion that we were short of coal I didn't lose any chance to register a kick about it.

Most of my complaints were made to Powers, who was the weigher for the company. On a few occasions I complained to Chisholm, the marine superintendent. I complained more than once to Eddie Powers. He was the outside man for them and, of course, I used to tell him I thought the weights were not right. I do not remember making a personal complaint to the defendant Mills. I told him several times that I thought his coal was "bum," and that it was short on weight. Mills on such occasions told me that the Government weighed the coal, and what could he do about it. I do not remember his saying anything else on such occasions.

Q. Do you recall at any time having any conversation with the defendant Mills about coal, about coal being sent to your home?

A. Oh, he said, I thought in a joke,—I met him on the dock one day, and Mr. Mills said, "If you would like a ton of coal" or something like that, "I will send it over to the house"; and I said "You had better put it in the ship," and we both laughed and walked [941—882] off.

Q. You told him he had better put the coal in the ship? A. Yes, sir.

Q. Was there any coal ever sent to your house by the Western Fuel Company?

(Testimony of W. L. Bunker.)

A. Yes, sir, there was a ton of coal sent there, I presume—my wife told me there was; I didn't see it.

Q. Did you receive any bill for the coal?

A. There was a receipted bill sent.

Q. A receipted bill of what concern?

A. I never saw the bill; my wife told me about it, but I never looked at it.

Q. Do you know where the bill is now?

A. She burned it.

Q. Had you ordered any coal at any time from the Western Fuel Company?

Mr. McCUTCHEN.—One moment now; he did not say that the coal came from the Western Fuel Company.

Mr. ROCHE.—We will prove that it did.

Q. Did you ever pay for the coal? A. No.

Q. Did you ever receive any bill at all for the coal excepting this bill to which you have referred?

A. No, sir. It did not come to me personally.

Q. Did you ever order any coal at any time from the Western Fuel Company?

A. No, I don't think I ever did.

Q. And did you ever have, to your recollection, any conversation with the defendant Mills excepting the one regarding supplying you with coal, excepting the one you narrated when he suggested sending some coal out to your house and you told him he better [942—883] had put it on the ship?

A. Well, I often spoke to Mills about it in a general way, "Give us good coal this time," or "Give us Comax coal" or—

(Testimony of W. L. Bunker.)

Q. (Intg.) I don't mean that, I mean did you ever have any conversation with the defendant Mills with reference to sending coal out to your home, and when he made that suggestion you told him he had better put it on the ship?

A. No, I never did.

(The attention of the witness was here directed to a letter dated January 29, 1909.)

That is the letter to which I referred, and which was sent to Mr. Chisholm. It was written, I think, before I got to Honolulu.

(Counsel for the prosecution here stated that said letter was already in evidence, but proceeded to read it to the jury as follows:)

“PACIFIC MAIL STEAMSHIP COMPANY.
‘Manchuria’ Voy. 18 at Honolulu.
Jan. 29, 1909.
Subject: Shortage of coal received at S. F. voyage
18.

W. Chisholm, Esq.,

Marine Supt. P. M. S. S. Co.

Dear Sir:

Please be advised that in coaling at S. F. we received all coal taken on board in reserve bunker, and drew from main bunkers for port use.

Have weighed samples of the coal supplied in S. F. and find it runs 41 cubic feet per ton (when allowed to partly dry out); by allowing this average we are still 123 tons short. This shortage I have charged to port consumption at S. F. making 309 tons in

(Testimony of W. L. Bunker.)

place of 186 tons as actually burned.

Respectfully,

W. L. BUNKER,

Chief Engineer.

P. S. Cannot report on quality of coal as we have been using Takasima & Lagawa on passage down.

W. L. BUNKER." [943—884]

I recall writing that letter. Before voyage 18 I had made complaints regarding shortages of coal only in a general way, personal complaints to Powers and to Chisholm, etc. I should say it was several voyages before that that I talked to Chisholm. He would talk the matter over with me and wanted to know if I had any suggestion to make where we could do better. Upon all these voyages which I made on the "Manchuria," prior to voyage 18, the coal would be distributed more or less among the three bunkers. I wanted to get it in where it was handiest, so as it would save money for the Pacific Mail Steamship Company, because they were doing their own trimming. On voyage 18 I started to put my coal in the reserve bunker. It was cleaned out before the Western Fuel Company started to coal the vessel. All the coal that was put into the liner on that occasion was placed in that reserve bunker. I started to use that coal after I left Honolulu, as near as I can remember. I did not take any coal out of that bunker for port consumption. I used the aft bunkers for that purpose. I wrote that letter the evening before I reached

(Testimony of W. L. Bunker.)

Honolulu. The way in which I arrived at the 123 tons shortage on this voyage 18, concerning which I wrote to Mr. Chisholm, was this: I weighed the coal in a tub and got the weight per cubic foot, as near as I could; then I computed the amount in the bunkers at that weight. The lower hold was full of coal as near as I can remember. In answer to the question whether I assumed that the entire bunker was full in making that calculation, I would say that a draughtsman, in designing the bunkers of a ship, takes three inches from the lower lip of the deck beam for the space that the coal will occupy in a ship; that is to say, you do not measure right up to the upper decks. The bunkers ordinarily would not be filled that high. I did not touch the coal in this reserve bunker before I reached Honolulu. [944—885] I simply measured it and weighed it on steel yards that we carried on board. I did not make any further investigation for the purpose of determining whether or not there was a shortage at the time I burned the coal. By trimming the ship I mean the operations by which the men go into the bunkers as the coal is received, and shovel it back and stow it away, so as to avoid spaces and unfilled corners. The men go into a bunker and stow it away as the coal goes through the hold, and then leave one after another until there is one trimmer left, and he has to leave when there is no longer any room for him by reason of the increasing coal. After voyage 18 I did not make any more accurate measurements of my coal for the purpose of finding out whether there

(Testimony of W. L. Bunker.)

were any shortages. I had the coal distributed through the various bunkers, and therefore it would be impossible to tell to a ton just what was put in the bunkers. I do not remember making any more complaints to Chisholm, except talking in a general way.

Mr. ROCHE.—Q. When did you last have any conversation with Chisholm in which you complained of the shortage of coal?

A. I could not tell you exactly. A few trips after that I spoke to Mr. Chisholm about using the upper decks and the reserve bunker for coal, and that would do away with taking coal here in San Francisco, and he said he would take it up with the office, and after that, shortly afterwards, we did take coal on the upper decks, and after that took very little coal in San Francisco, and the last two trips on the ship, did not take any.

* * * * *

Q. Did Mr. Chisholm say anything to you as to whether or not you should thereafter make any complaints regarding shortages?

A. He told me to not write any more letters of that description. [945—886]

After voyage 18 I made arrangements to take on as much coal as I could over in the Orient, and very little coal thereafter was taken on at San Francisco. On the last two voyages I took no coal at San Francisco. By using the decks I could get enough coal aboard, together with what I got at Honolulu, to do the round trip. In getting into the coal that was

(Testimony of W. L. Bunker.)

loaded in our bunkers by the Western Fuel Company, I would sometimes find spaces where there was no coal. The men in the hold would naturally leave a few little spaces, owing to the almost inaccessible places to get at in stowing. Such spaces are called "holidays."

Cross-examination by Mr. KNIGHT.

We are particularly on the lookout for these holidays when coaling in Japanese ports. There everybody from the chief engineer down gets into overalls and each man has his bunker to watch and it is up to the engineer to see that they fill those bunkers full. If my memory serves me correctly, we took about 1280 odd tons aboard the "Manchuria" at the completion of voyage 17, and just before the commencement of voyage 18.

(The witness was here permitted to refresh his memory by records and the commander's report, from which it appeared that the number of tons was 1284.)

At the completion of voyage 17 I would say that we had on board in the neighborhood of 2200 tons.

(It was admitted at this point by counsel for the prosecution that the three volumes here produced by counsel for the defendants are the log-books kept by the witness Bunker at the times respectively specified.)

Page 1 of the engineer's log-book for voyage 18 of the "Manchuria" specifies the amount of coal on hand and the amount of coal laden on the steamer at this port. The amount of coal on board at the

(Testimony of W. L. Bunker.)

termination of voyage 17 was, according to this log, 2287 [946—887] tons, and the amount of coal laden on the steamer at this port prior to the commencement of voyage 18 was the same as I have heretofore given.

(A blue-print of the steamship "Mongolia" was here shown to the witness.)

The "Mongolia" was a sister ship of the "Manchuria," and a blue-print of one would be virtually the same as of the other. The "Mongolia" and the "Manchuria," as originally built, were intended for Atlantic trade.

Q. And do you recall whether or not prior to the time that they were put on the Pacific trade their bunker capacities were enlarged in order that they might carry more coal?

A. Yes, sir. They did not enlarge the bunkers, but they used the lower hold and the Orlop deck of the No. 4 hold of the ship under No. 5 hatch.

Q. That is, the cargo carrying capacity of each steamer was reduced to that extent. A. Yes, sir.

Q. And that part of the vessel was turned into the coal bunkers? A. Yes, sir.

Q. Let me show you this blue-print and ask you whether or not you will designate the reserve coal to which you have referred as the place where the coal was laden into the "Manchuria" just before voyage 18. A. Yes, sir, that is it.

Q. It is marked here with a cross. Take the three spaces just above, is that also a part of the reserve hold of the steamer?

(Testimony of W. L. Bunker.)

A. Yes; they use it now and did afterwards, but at that time we used these two decks here (pointing).

Q. That is, you are now referring to the lowest hold marked [947—888] “Hold No. 4,” giving cubical contents of 47,350 feet? A. Yes, sir.

Q. And the Orlop ’tween-decks No. 4?

A. Yes, sir.

Q. Giving the cubical contents of 24,730 feet?

A. Yes, sir. I want to refresh my memory here as to whether this is 43 cubic feet. This is 43 cubic feet or 42 cubic feet. Do you see it here? I have seen it on some of the drawings, I am almost sure, and I know when I figured the bunkers out, I am almost sure I figured them at 43 in order to get as little coal charged for as possible to fill the bunker.

Q. In order to make the quantity large for as small a cost as possible? A. Yes, sir.

Q. Do I understand that subsequent to that time, that is, subsequent to voyage 18 the two upper compartments in the reserve bunker marked “L. T. D.”—I presume that means “lower ’tween-decks”?

A. Yes, sir.

Q. (Continuing.) No. 4, with a cubical capacity of 24,730 feet; and also “M. T. D.,” which is the main ’tween-decks, I suppose—is that it?

A. The middle ’tween-decks, or as I called it this morning, the upper ’tween-decks.

Q. They were not used at that time as portions of the coal bunkers for the “Manchuria”?

A. You mean that these two upper decks were not used.

(Testimony of W. L. Bunker.)

Q. Yes.

A. No, they had not been used up to that time.

Q. Those figures are given on the blue-print as to the cargo carrying capacity and coal carrying capacity of the "Mongolia," and I presume the same as to the "Manchuria," and those capacities were figured before each vessel was transformed or changed for this trade on the Pacific Ocean.

A. Yes, sir. [948—889]

Q. So that you would add to the coal carrying capacity of the vessel the amount which I have read here into the record from these four compartments of the reserve bunker? A. Yes, sir.

Q. Do you recall, Mr. Bunker, whether or not at the time you took the additional coal on, 1284 tons, you completely filled the reserve hold, that is, as much of the reserve hold as was then being used for the purpose of carrying coal? A. Yes, sir.

Q. And did you have any coal left over after filling that hold?

A. Yes. I could not tell you the exact figures, but there was quite a lot on the top of the deck that I had the Chinamen when I got to sea level off to 4 feet in height and square it off so that I could measure it off and get the cubical contents of the pile.

Q. And that is the method by which you estimated the cubical contents of the particular pile of coal?

A. Yes, sir.

Q. And is that the method by which you estimated the entire amount of coal cargo you had taken on board?

(Testimony of W. L. Bunker.)

A. That is the only way I could get at it without weighing it off.

Q. Will you indicate, Mr. Bunker, on this blueprint, where in addition to the two portions of the reserve bunker you put the additional cargo, or rather, the additional coal which you put on at San Francisco?

A. This is No. 4 hold, holding 1150 tons, at 43 cubic feet—approximately that. That is what we always called it. Above this was the coal that was left here. On the after end there was a little coal left over—

Q. (Intg.) Will you refer to the holds by their technical names? [949—890]

A. Yes, I will. Coming in on that trip, as near as I remember, the after main bunkers were full, and I wanted to fill this one; that is, the lower hold, and consequently I worked back on the Orlop deck for a way. There are holds in this bunker right here. Then I started the lower hold so that I could fill this up full. I intended to take somewhere about 1300 tons. I wanted to figure on this bunker because there is less question of doubt as to the capacity of that than there is as to any of the rest. There was coal back here, but I could not tell you how much, but I remember it went clear across the top. There was quite a little pile on the after end of the Orlop deck. Forward here we had a pile that was 4 feet high; but how far it was from the bulkhead I cannot tell you now, but it came out for quite a little distance and I had the Chinaman level it off. That laid on top of the hatch.

(Testimony of W. L. Bunker.)

Q. That laid just above the lowest hold of the after part of the reserve hold?

A. Yes, sir, that is what I think, it was just a few feet above this lower hold.

Q. Now, Mr. Bunker, in estimating the cubical contents of a ton of coal, do you recall whether or not this particular coal that was put into the "Manchuria" at that time was wet or dry?

A. I could not tell you, I think my report will probably tell you. Medium and dry—that is what I put down as a matter of form all the time anyway.

Q. Your letter will probably refresh your recollection on that point as to the condition in which the coal was at the time it was received. You state you have weighed samples of coal supplied to San Francisco and found it runs 41 cubic feet per ton when allowed to partly dry out. Would that refresh your recollection [950—891] as to the condition of the coal when it was received?

A. I presume it must have been more or less wet in going in.

Q. Do you remember at what time you weighed the samples for the purpose of finding how much it ran to the cubic foot, that is, how many cubis feet to the ton?

A. I think it was the third day out from San Francisco. I remember I had some other things I had to watch pretty closely for a few days, and I think it the the third day out from here I did this weighing down in the bunker.

Q. Do you recall whether or not when you spoke to

(Testimony of W. L. Bunker.)

Mr. Chisholm about it, he suggested about having a box or some kind of a receptacle made for the purpose of determining the amount of cubic feet to the ton?

A. I don't remember his stating anything like that, but it was unnecessary anyway because there was a tub on board the ship that held exactly 4 cubic feet and I don't see why there would be any object in making any other box or tub or anything else.

Q. And then you would take your steelyard scales and fill your box and then weigh it out?

A. Fill the tub.

Q. Fill the tub and weigh it out; and in that way get the cubical contents of the coal? A. Yes.

Q. And your best recollection is that that occurred when you were about 3 days out? A. Yes, sir.

Q. Do you recall how many different bunkers there were in the "Mongolia" and in the "Manchuria"?

A. How do you mean?

Q. I mean subdivisions of bunkers as compared we will say with the "Korea" or the "Siberia"?

A. I don't know how many bunkers were on the "Korea" or the "Siberia." I always kept on my desk a typewritten copy of [951—892] each bunker and what it held, and each subdivision, but I never tried to memorize them. I suppose I could go along and call each one out.

Q. The bunkers on the "Korea" and the "Siberia" are nearer together,—they are not so much scattered as the bunkers on the "Manchuria," are they? Were not both of those vessels built for this trade?

(Testimony of W. L. Bunker.)

A. Yes, sir, they were built for this trade, but they also in their forward bunker had a hatch there that could have been converted into a freight hold, if I remember right.

Q. But it would be rather difficult, would it not, Mr. Bunker, unless we adopted some particular method of measuring the coal to determine with any degree of accuracy the amount of coal in the "Manchuria," if she was at all well loaded with coal?

A. Yes, certainly. I only measured this, as I believe I said before, as best I could to be sure of course that the Pacific Mail was not getting the worst of it.

Q. Otherwise you feel it would be impossible to determine with any degree of accuracy how much coal was put on a vessel?

A. Well, I would not like to say I was very close to it; it was the best of my judgment.

Q. Do you recall how many furnaces your steamer had in use at this port, either in unloading or in taking on cargo?

A. I think at that time I was probably using two single end boilers, three furnaces in each boiler, that is, six furnaces altogether; I tested it out on several occasions, I tried to run with the one boiler with forced draught, but I found I would use more coal in using one than two because I had to force the draught so much.

Q. And you used six furnaces?

A. Yes, sir. [952—893]

Q. You have how many furnaces in all on the "Manchuria"? A. 36.

(Testimony of W. L. Bunker.)

Q. And you used six out of the 36 here?

A. Yes, sir.

Q. Would you recall, independently of some memorandum, how much coal you hoisted in and out of the vessel by your winches at the end of voyage 17 and the commencement of voyage 18?

A. I could not tell you; in fact, they never gave me a report of the cargo on board the ship. The only thing I went by was the draught. My reports dealt more with the draught and the speed of the ship. I had nothing to do with the cargo.

Q. The greater the cargo that was hoisted naturally the more coal would be consumed?

A. Yes, sir.

Q. I will show you again the master's report of voyage 17 and 18, and ask you whether or not it would refresh your memory as to the amount of cargo that was delivered by the "Manchuria" at the close of voyage 17 and the amount of cargo which was taken on board at the commencement of voyage 18. To save time, Mr. Roche, I don't suppose there will be any question about these figures.

Mr. ROCHE.—I should not imagine so, Mr. Knight, but I was going to object to this, however, as to the materiality of it. The testimony of the witness on direct examination related to one bunker, that is, the reserve bunker. The witness testified, as your Honor will recall, that so far as the coal which was burned in burning in the furnaces in port, that it was drawn from one of the other bunkers, and that the reserve bunker was not interfered with, and

(Testimony of W. L. Bunker.)

that it was a shortage that was charged up against port consumption. [953—894]

(The pending objection having been overruled, the testimony proceeded as follows:)

Mr. KNIGHT.—Q. If you assume, Mr. Bunker, as I think we may, from these reports, that there was approximately a little over 10,000 tons of cargo hoisted in and out of the “Manchuria” at the close of voyage 17 and the commencement of voyage 18, what would you say would be the normal port consumption of coal to accomplish that work?

A. Well, I would say somewhere about 15 tons, would be a reasonable figure. You see in way ports, with the steam on all the boilers, and your dynamos running full so as to keep lights for the passengers in the various rooms, and your refrigerating plant, which is a very large one—a 45-tons plant—and it eats up a lot of coal and also your feed-pumps running, and so on, your coal consumption goes up sometimes to 45 tons a day. But lying here in San Francisco, with no passengers on board and no lights going, or anything like that, and the feed-pumps, running the two single end boilers, it would not take so much, and I would judge that 15 tons would be about the average, I believe I have the exact record. I experimented with that several times and have the exact figures, but I left them with the succeeding engineer.

Q. Well, you would say that to accomplish that work under the circumstances, the vessel lying at San Francisco, and with no passengers on board,

(Testimony of W. L. Bunker.)

that it would be about 15 tons a day, so that for 10 days it would approximate 150 tons?

A. Some place around there. I could not tell exactly. 10,000 tons I should think would be a rather small amount because we have often brought from the Orient as much as 1500 tons over here and then taken quite a cargo back. You see you hoist the cargo in and then take it out again. [954—895]

Q. The captain's report, I will say for your information, Mr. Bunker, shows 10,400 or 10,500 tons of cargo delivered here at the end of voyage 17, or laden on the vessel at the commencement of voyage 18?

A. I would like you to let me see that report again, please. I don't think you will find anything in that as to the cargo on voyage 18. If I remember right, Captain Saunders left the ship at the end of voyage 17 and Captain Freel took it on voyage 18.

Q. I think that is correct. I show you voyage 17 now. Will you read from that the amount of cargo which the "Manchuria" brought into San Francisco at the end of that voyage? I think you will find it in the last line of the column headed "Cargo, San Francisco, discharged"? A. 10,839.

Q. No, that is the total cargo carried between ports.

A. Excuse me, but wouldn't it be better to go by the draught of the ship? For instance, she holds 4,000 tons of water ballast, and if she pumps that water ballast in, it takes so much more to give a draught here.

Q. Do you know whether any water ballast was

(Testimony of W. L. Bunker.)

pumped in or out of the vessel?

A. I could not tell you that.

Q. Well, just take her cargo discharge. You will find here, at the expiration of voyage 17, that the cargo discharged at San Francisco appears to be 8621 tons. This is cargo discharged at other ports, at Honolulu, Yokohama, Kobe, Nagasaki, and so on.

A. Yes, sir.

Q. And the amount of cargo laden on board the "Manchuria" at the commencement of voyage 18, so you will notice here, was 1539 tons?

A. Yes, sir. [955—896]

Q. That makes approximately a trifle over 10,000 tons? A. Yes, sir.

Q. Do you think you would not consume here in this port for doing the work that has been described for say the ten days you were lying here not to exceed 150 tons of coal?

A. I think that would be about right; I believe I have charged 180 tons. I would like to take a contract on doing it for 180 tons.

Q. And included in that was the coal required for starting your other 30 furnaces?

A. Is it not 25 tons for starting fires? What does it say here? Starting fires 25 tons.

* * * * *

Q. Is it not the fact that the complaint or suggestions which you had to make concerning the coal here bore more on the quality of the coal than the quantity of the coal?

A. Well, I suppose of the two the quality had more

(Testimony of W. L. Bunker.)

to do with it or as much to do with it as the quantity, or more so, but I could not kick about the quality but I could kick about the quantity.

Q. You knew that the Western Fuel Company was giving you whatever quality coal it had, and yet it was not satisfactory to you as a matter of fact, was it? A. That is the idea.

Q. You felt you were not getting the proper amount of heat units out of it that you could get out of other coal; was not that the fact?

A. Yes, sir.

Q. And naturally it was not as satisfactory to you for that reason as an engineer, was it?

A. I would not say it was entirely due to the quality here. The quality had a good deal to do with it, but I also felt that [956—897] it was more or less short on the quantity and I made sure to report it.

Q. And so you made this written report that has been put in evidence here? A. Yes, sir.

Q. It is not an unusual thing, is it, Mr. Bunker, for engineers who have at heart the welfare of their employer, to register a protest against the quantity of coal that steamers have received all over the world at every coaling port?

A. Well, I expect I would do it if I thought I could get more coal by it.

Q. And that is so virtually at any port at which any of your vessels coaled?

A. I don't know what the other engineers do, Mr. Knight; I know what I did.

As I testified on direct examination, I finally came

(Testimony of W. L. Bunker.)

to use almost entirely Japanese coal. One afternoon I tested a sample of the San Francisco coal. I could get more heat units out of it than I did out of the Western Fuel Company's coal. It was a better quality. I don't remember that the coal that I got from the Western Fuel Company at that time was given me while the strike was going on. The matter of the heat units was not the only reason why I preferred the Japanese coal—they gave us better measurements over there as well as better quality. I never paid any attention as to how they measured their coal, whether it was by draught of the barges or not. I measured the bunkers, and saw they filled them up. They had to take my figures, because I signed the bill before they could get their money. In answer to the question whether I had occasion to insist upon additional weights there frequently, I would say I never gave the Mail Company any the worst of it. [957—898] The coal of the Western Fuel Company made more clinkers than the Japanese coal, as the result of burning; but then, the reason I think why so many engineers got clinkers is that they did not burn their fires right. It is better to carry a light fire. I never paid so much attention to the coal of the Western Fuel Company on account of clinkers.

(A blue-print, concerning which the witness Bunker testified, was here introduced in evidence as Defendant's Exhibit "J." The log-books referred to were not introduced in evidence, but counsel for the prosecution consented that they might be used fur-

(Testimony of Robert Sass.)

ther if counsel for the defendants should so desire, without proving any foundation.)

[Testimony of Robert Sass, for the Government.]

ROBERT SASS, a witness called for the United States, and sworn, testified as follows:

Direct Examination by Mr. ROCHE.

I live now and have lived for 22 years in San Francisco. I am now assistant engineer down at the Vermont Marble Works. I worked for John Rosenfeld & Company and for their successor, the Western Fuel Company, during the period from 1901 to 1904. I was in this period taking care of the barges "Corsair" and "Theobold," until the former sank. The Mission Street bunkers were in charge of John Rosenfeld & Company at that time—Mission number 2. I was taking care of the barges for the Western Fuel Company as for the Rosenfelds. After the "Corsair" sank I continued on the "Theobold." My duties were to haul the barge about and to see that she was loaded right, when they [958—899] were dumping coal into her down at the bunkers. She always loaded at Mission Street. The coal *would checked* in from the hoppers at the end of the bunkers shot into the barges.

The coal would be discharged from the barge into different ships belonging to the Pacific Mail Steamship Company and other vessels. After taking care of the barges for about two years I worked along the city front as longshoreman, and then afterwards I was again employed by the Western Fuel Company shovelling and trimming coal. The date of my re-

(Testimony of Robert Sass.)

turn to the Western Fuel Company was about 1909. I was hoisting coal for them then, too, on the barges "Ruth," "Nanaimo," "Theobald" and "Comanche." I was the engineer on the barge. We got the fuel for the engines out of the barge itself, using our coal from the stock that had been taken from the bunkers. I never especially weighed any of that coal. I suppose we would use a couple of tubs of coal for 24 hours for our fuel purposes on the barge. It would depend on the size of the barge. We did not burn any coal when we were moored in the stream or in the dock. I used to bank my fires at night; it would only take a couple of shovels of coal to do that. When the barges were not being used at all for several days, I would not keep up my fires. On the occasion of my second employment with the Western Fuel Company, I worked from 1909 until the middle of 1910. I think I worked for about a year. I did no other service except hoisting coal, except that once for a few weeks I tended hatch in another man's place. I do not remember the time. While I was thus tending hatch I observed the men working in the hold of a barge. It was in the beginning of 1904 that I ceased my first employment with the Western Fuel Company.

I think in 1908 I started to work again shovelling coal and trimming for the Western Fuel Company, but I did that work [959—900] only off and on, until 1909; then I worked, as I have said, continuously for about a year. When I was trimming from 1908 to 1909, I did not visit the barges. When I

(Testimony of Robert Sass.)

worked for the Fuel Company prior to 1904 I observed the day the buckets were being filled from time to time on the barges when coal was being discharged from barges into liners. The tubs that were weighed were always loaded up, filled up, and those that were not weighed were very slight, the majority of them. The coal placed in the tubs that were weighed, as compared with those that were not weighed, was almost always fine or slack coal, with no lumps in it. The fine coal is heavier than the lump coal. When I was an engineer hoisting on the barges from 1909 to 1910, I again observed the same thing in respect to the tubs.

Sometimes I worked at night on the barges. I could not see the quantity of coal in the tubs, however, very well from my station in the engine-room. Regarding the lights, I would say that I have seen times when they would have to have two clusters of electric lights from off the steamer, and a couple of box lamps. The Western Fuel Company furnished the latter, while the electric lights came from the steamer. A man would have to stand right over the hatch at night in order to see the coal contained in the tubs. Weights would be taken about every hour at night, so far as I could guess, and that would continue all night long. When weights would not be taken the weighers would sometimes walk up and down the deck, and sometimes come into the engine-room to warm themselves. I was in the engine-room myself. At other times, the weigher would sit around the hatch watching. He would not sit

(Testimony of Robert Sass.)

in the engine-room very long, perhaps five or ten or fifteen minutes at a spell. You could only see a part of the deck of the barge [960—901] from where I was operating my engine, because it was so dark.

Sometimes the tubs that were not weighed would contain as much coal as when weighed on the barges, but not very often. During the three weeks I tended hatch the men shovelling coal were practically within my observation all the time. When a weight was to be taken, the hatch-tender would call out "On the scales," and then two men would come up out of the hold to help put the tub on the scales. About 15 minutes would be occupied to take the weight of four tubs. After the Western Fuel Company took over the Mission Street dock I used to be there day and night on the barge, because I slept on the barge. At about five o'clock, when the day's work was over, I would wash and then go over and get my supper, and then come back and sleep on the barge. I was at that time familiar with the towers located over the bunkers, and with the manner of discharging coal from the hoppers into the cars below by means of chutes. When they were discharging a ship they would ordinarily quit work in the afternoon about five o'clock. I am, of course, speaking of the time before I left the employ of the Western Fuel Company. I never noticed what time in the afternoon the Government weigher left the dock. Eddie Mayer was foreman for the Western Fuel Company on the dock. I was at the same time barge tender. Twice I saw coal running out of the hopper into the

(Testimony of Robert Sass.)

bunkers after five o'clock. The work was all stopped and I was making the barge fast, tying her up for the night, and I heard the noise. It was the coal running that attracted my attention, and I looked up to the bunker and saw the coal running out of the hopper into the bunker. It was coming right out of the hopper into the bunker. I did not see anybody there at the time. I do not know who opened up the chute. I saw [961—902] one hopper emptied in that way on one night, and the other hopper emptied on the next night. It was so long ago that I cannot fix the dates when that took place.

Cross-examination by Mr. STANLEY MOORE.

I first commenced to work along the waterfront for John Rosenfeld on a barge. I have also worked both for the Western Fuel Company and for Woodside & Company in the period from 1901 to 1910. The last-named company were longshoremen. I also did some trimming of coal, for which I used to be paid sometimes by Powers and sometimes by Mr. Mills. I do not know which of them I was working for.

I know Mr. Powers very well, and am living in one of his houses, and have lived there for five years. I have known the Powers family since they were children. I suppose, when I was trimming, I used to work for Mr. Powers and Mr. Mills, because they paid me. I was paid by the month steady for taking care of the barges from 1901 to 1904.

Ever since I can remember the buckets were full when they were weighed, and light when they were

(Testimony of Robert Sass.)

not weighed. Sometimes weights were taken oftener than at other times. They took weights about once every hour at night, as I have testified on direct examination. So far as I know, it was just about the same in the daytime. They would take about eight or ten weights a day. Generally, they would weigh four buckets at a time. That is called a round of weights. I have seen lump coal in those buckets that would be weighed, but the majority of the coal was fine coal when weights were taken. In other words, when they would weigh the tubs they would generally put in fine coal, and when they would not weigh the tubs, they [962—903] generally put in fine and lumps mixed. I used to be at the Mission Street bunkers for three and a half years, or close on to four years. I would not be there every day; I would simply go down to the barge to load up. Sometimes when the barge was not working, she would be lying alongside those bunkers, or over at the Pacific Mail dock, most of the time at the former place. I was always on the barge, and slept there. When the barge went from the Mail Dock over to the bunkers to get coal I would go with her and stay with her while she was loading; so that, in those four years I was in the neighborhood of the bunkers a great many times. On the two occasions, when I saw coal running out of the hopper, I do not know whether the hopper was full or not. I do not know whether sometimes, when a vessel has been coaled, they have to clean out the hoppers. I do not know whether the coal that I saw or heard running out was foreign

(Testimony of John W. Smith.)

to four in the afternoon, and from about seven in the evening until five the next morning, with the exception of a short time off. The "Korea" was at that time taking on coal. She was being coaled by the Western Fuel Company from the barge "Wellington" on the inshore side. This last statement is in reference to the night-time. In the afternoon I think she was being coaled by the barge "Theobold" on the offshore side. I am not absolutely sure, but I think Mr. Dave Powers was with me on the afternoon trip. He was in the employ of the Government at the time as a customs agent. The situation that I observed during the afternoon in connection with the coaling of the "Korea" was exactly what I had observed previously on December 16th and 17th. I was down there then too for the purpose of observing the coaling of the "Korea." On those occasions I was accompanied by Mr. Powers. We went in the daytime only on the 16th and 17th. On the 16th we were there from about 1:30 to 5, and on the 17th from 11 A. M. until 5 P. M. On the 16th the "Korea" was being coaled from the "Theobold," as also on the 17th. Upon these three dates, the 16th, 17th and 18th, during our observations in the daytime, I stationed myself at different places on the steamer "Korea," where I could best see the coaling. I do not think I went down upon the barge. I was at one time across at the other dock, on another ship, I believe, but for a short time only. I do not recall which particular day that was. I located myself on the upper part of the steamer; part of the time on the

(Testimony of John W. Smith.)

bridge, and part of the time on the upper deck. On the first date I counted the tubs to see how many they were weighing, [878—819] the average they were taking—and they were running 56 tubs, and then weighing the next four. That was on the first date. I do not remember the name of the weigher. On the second day I did not count the tubs. The same weigher was present, I think, but I am not certain. I did not notice the number of weights that they were taking on the third day, that is, on the 18th. The tubs that were not weighed were lighter than those that were weighed. I was on the bridge part of the time, and on different places on the deck, not very far from where they were running the coal into the ship. I am not certain whether they were putting coal into the same hole during the three days. I could tell by the position occupied by me when weights would be taken. I did not make any memorandum of the rapidity with which the tubs were being hoisted. Mr. Enlow, I think, was with me, as well as Mr. Powers, during a part of the daytime, but I could not say on which day. The tubs which were weighed were in every case heaping full, well rounded out, and the tubs which were not weighed were hardly ever rounded out. To my recollection none of them were as full as the ones that were weighed. In the case of the tubs that were not weighed, the coal would sometimes be below the top of the tub. It would quite often be that way. To my recollection, though, I could not say positively none of the tubs that were not weighed were rounded

(Testimony of Robert Sass.)

Redirect Examination by Mr. ROCHE.

I appeared before the Grand Jury under a subpoena served upon me by Mr. McNab, who, as United States attorney, thoroughly examined me before the Grand Jury on the matters to which I have testified here to-day.

I have never paid any social visit to David or Edward Powers, and they never paid any to me except that we would occasionally meet on the street. On such occasions we would talk only a short while. I am a great deal older than the Powers boys.

I could not see the buckets come up from the hold of the barge until they got above the pile of coal on the deck, which would sometimes be seven or eight feet high. I stood on a level with the deck; but there are two barges, the "Wellington" and the "Melrose," where the engineer stands six or seven feet higher than the deck. The first coal that is hoisted from the barge is from the deck. It is the duty of the engineer as the tubs come up to watch for the signal of the hatch-tender if a weight is to be taken, and also to watch the tub as it ascends so as to slacken the pace as the tub gets nearer the tripping point. There is a lantern and sometimes an electric cluster up above the point where the tub trips that used to shine the light so that the flash of it would run [965—906] on the trolley beam up there and on the bucket as it got within the range of the light. When the custom-house weighers ordered the men to brush off some of the coal from the tubs before they would allow them to be weighed, the tubs were filled up above their sides.

(Testimony of Robert Sass.)

Recross-examination by Mr. STANLEY MOORE.

I knew that David Powers was working for the Government, but I did not know what he was doing. I saw in the paper that he was a witness in this case.

Recross-examination by Mr. McCUTCHEN.

When I was hoisting coal from the barges, one end of my cable was attached to the tub, and the other end to the drum of the windlass. There was no indicator on the cable to show me how high the tub was, and I could not follow the course of the tub by the number of laps of the cable, because the movement was too rapid; but in any case I was watching the tub and not the drum.

[Testimony of Philip Ganesi, for the Government.]

PHILIP GANESI, a witness called for the United States and sworn, testified as follows:

Direct Examination by Mr. ROCHE.

I now live and have lived for about ten years in San Francisco. I now work and have been working since I have been subpoenaed out at the cement works. I went to work for the Western Fuel Company in 1905, and continued working for them up to 1909, and then I went away for about 18 months, and came back in 1911. I worked pretty continuously for the Western Fuel [966—907] Company during that first period of employment. I was paid by the hour. Sometimes I would work 15 and sometimes 12 days in a month. After I came back to the Western Fuel Company in 1911, I worked there

(Testimony of Philip Ganesi.)

then on until February, 1913. It was in April, 1911, that I came back. During the four years from 1905 to 1909, I was working on the barge filling up the tubs. I was a shoveller. During the period of my employment following 1911, I worked on the barges shovelling, and helping to discharge cargoes for the Western Fuel Company on vessels bringing coal to San Francisco. I think in the latter case the coal was weighed on the bunkers. I also during my first period of employment worked on ships where the coal was weighed out on the scales on the ship. When coal was thus weighed out on the ship, men would have to come up out of the hold of the ship to land the tub. Pallas was one of the hatch-tenders when I worked on the barges; also there was a man named Rooker. The former is not, the latter is, still employed by the Western Fuel Company.

I knew the defendant Edward J. Smith, and have known him for two years. I saw him almost every time I was working during my last two years of employment. He was keeping the weights in a book. During the four years that I worked shovelling coal on the barges weights would be taken every hour, and sometimes every two or three hours. When a weight was to be taken the hatch-tender would call out; then shovellers would come up from the hold and help land the tub. During those four years of my employment, they would always, when weights would be taken, put fine coal in the tubs. It weighs more. The tubs would be often all full of fine coal, the heaviest coal you can find on the barge. So far

(Testimony of Philip Ganesi.)

as the tubs that were not weighed were concerned, they would put in anything that would go, awfully fine or anything. The hatch-tender, about five [967—908] minutes before a weight was to be taken, would holler, and then we would be keeping watch when the custom-house man came, and we would fill the tub. One time the hatch-tender told me that my tub was pretty light when a weight was to be taken, that there was not enough fine coal put in the tubs and not enough coal put in and he said to me, "Why don't you fill them up like the rest?" Four tubs are ordinarily weighed, one at a time, and my tub was the lightest of the four. It was all full of rough coal, rock, and he told me if I did that again he would fire me. The hatch-tender would be all the time telling the men to put more coal in the tubs that would be weighed, or to fill them with fine coal. During these four years, also, I sometimes worked in the hold of a ship that was discharging imported coal, and upon those occasions the coal would sometimes be weighed upon the decks of the ship. They would tell me then, "Don't you fill too much when they are going on the scales, otherwise the Western Fuel people will get mad if you fill them up too much." That was in connection with the imported coal. During my last period of employment, from 1911 to 1913, Mr. Rooker was hatch-tender. Rooker said every time, "You fill them up pretty good when they are going on the scales, and when they are not going on the scale he don't care"; and the men did fill the tubs well when they were

(Testimony of Philip Ganesi.)

being weighed. The tubs that were being weighed contained more coal than those that were not weighed. I often worked at night. Weights would be taken about once in two hours. I have met Mr. Rooker, the hatch-tender, within the last four or five months, after I was subpoenaed in this case. I testified before the Grand Jury.

Q. I want you to go on and state what took place in the office of Mr. Mills, and in the presence of Mr. Mills, after you [968—909] had testified before the Grand Jury.

A. Mr. Mills, he asked me, he said, "You're Mr. Ganesi"; I said "Yes." He said, "You were before the Grand Jury?" I said, "Yes." He said, "Did you get paid for it?" I said, "Yes, I got \$3.00 for the day I was on." Then he asked me, he said, "You go to work to-morrow morning." First he telephoned up-town to somebody, and said, "I have got some more witnesses"; and then he said, "You wait until to-morrow morning; he said, "You go to work to-morrow morning, there is a couple of hours' work there, and after you get through the work you come up to my office;" and I said, "All right"; but the next morning I didn't show up.

Q. You did not go to work A. No.

Q. Do you remember anything further that took place at that time? Do you remember anything more that was said by the defendant Mills to you?

A. Yes, sir; he was going to ask me all the questions about the Grand Jury.

Q. When you were brought before the Grand Jury

(Testimony of Philip Ganesi.)

by Mr. McNab, who was then the United States District Attorney, by whom were you employed at that time?

A. I was employed by the Western Fuel.

Q. You were then working for the Western Fuel?

A. Yes, sir.

Q. But you say you did not go back there after this conversation? A. No, I did not. [969—910]

Cross-examination by Mr. STANLEY MOORE.

I know David and Edward Powers, and have known them for ten years last past. I have never talked with either of them about the Western Fuel case, although I have been waiting to be called as a witness with David Powers for several days. When I first knew the Powers boys I was working on a barge at an old dock. Sometimes I would do trimming for Powers, and be paid by the Western Fuel Company. In fact I worked for Powers in trimming before I was employed with the Western Fuel Company. I do not think I worked for Powers in the trimming since the fire, but I did before the fire. The last time I worked for the Western Fuel Company was February, 1913. Dave Powers used to go down to the dock many times, but he only walked home with me once. We never talked about the business of the Western Fuel Company. He was never a hatch-tender over me. When I was working there from 1905 to 1909 on the barge, Dave Powers was a timekeeper, or something like that. There were two steady gangs in 1909 and at that time the hatch-tenders were Pallas and Wilson. I went back to the

(Testimony of Philip Ganesi.)

Western Fuel Company in April, 1911, and at that time Dave Powers was a hatch-tender, and that was the first time I ever saw him in that capacity. I was under him only a few days. I worked two or three days as a member of the gang in the hold of the barges, and then quit because I got sick. I cannot say at all how many buckets went up per hour; they range from 50 to 63 tons, but I don't know how many buckets that would be. Sometimes they go up fast, and sometimes slow. They go slow when the hold of the vessel is pretty nearly finished. They take weights with the same frequency when the buckets go slow as when they go fast. It is the same all the time, about once in an hour, or an hour and a half. When the buckets are going up slowly, they don't go up more than 20 or 25 an hour. They are supposed to take [970—911] weights every hour whether the buckets are going up fast or slow. It is not a fact that they are supposed to weigh so many buckets out of say 60. It is the time, not the number of buckets that go up, that determines when the weights are to be taken. I never heard that they were to weigh four out of 60 tubs. They weigh simply when the custom-house weigher tells them to. Then they weigh four tubs generally, one after another. I am paid 55 cents an hour, receiving five dollars for a nine-hour day. At night we get a dollar an hour. I worked a few months for a hatch-tender named Wilson. I worked three or four times on ships that were bringing in imported coal for the Western Fuel Company in San Francisco. I cannot remember when

(Testimony of Philip Ganesi.)

it was. I worked once on the "Titania." That was in 1909. That ship was not weighed out over the sides. The coal was not weighed in tubs, but was put into the Folsom Street bunkers. As long as I was with the Western Fuel Company I was mostly working on the barges. I cannot remember the name of any ships that I worked on where the coal was discharged over the side. When I was working on the barges I was on a steady gang, and there were two such gangs. I worked on any and all the barges. Some of the barges worked faster than others.

Q. Now, you say that when a weight was to be taken, fine coal was put into the bucket? A. Yes.

Q. What kind of coal do you claim was put in the bucket when a weight was not to be taken?

A. Anything, rock, full or not full, meeting the hook, and turning her loose, and letting her go.

Q. You would meet the hook, turn her loose, and let her go? A. Yes. [971—912]

Q. When the weight was to be taken, you would put in fine coal, would you?

A. Yes, and give plenty of chance to fill them up.

Q. You had plenty of chance to fill them up, too?

A. Yes.

Q. That was because the four buckets were to be weighed in succession, was it? A. Yes.

Q. And you had more time then to put in the coal in the buckets than you did when they were going up at other times? A. Yes.

Q. And so, when you had plenty of time to fill the buckets, you used to put in all fine coal, did you?

(Testimony of Philip Ganesi.)

A. Yes, the heaviest there was on the barge.

Q. When you were having to meet the hook, would you put in whatever kind of coal that was handiest for you to get in the bucket?

A. Yes, to get in the tub.

Q. What kind of coal weighs heaviest of all?

A. There is lots of difference in the weight. When it is fine and all the tub is good and full, and solid; if the coal is rocky, you can take three big lumps and put it in one after the other, and the tub is full.

Q. The fine coal weighs the heaviset of all, does it?

A. Yes.

Q. Does the fine coal weigh heavier than lump coal and fine coal, both? A. On a tub, yes.

Q. The fine coal weighs more than any other kind of coal that you can put in there, or mix in there, does it? A. Yes.

Q. How much time did you have to fill the buckets when the weights were not to be taken? [972—913]

A. When a weight was taken, that was solid, one was filled, and when that was going on the scale, we would fill the other one.

Q. About how much time did you have to fill the buckets when the weight was not to be taken?

A. It would take about a minute to fill one.

Q. It took about a minute to fill the bucket?

A. Yes.

Q. And when you first go to fill the bucket, do you generally shovel all the coal, or do you dump the bucket over and scoop it into the bucket?

A. Sometimes we scoop it in and sometimes we

(Testimony of Philip Ganesi.)

have to shovel it.

Q. About half the time you scoop it in and then shovel it, and half the time you have to shovel it all, do you? A. Yes.

I first saw Mr. Ed Smith working down there for the company in 1911. I did not see him there when I was there in 1909. I did not work on the barges as often at night as I did in the daytime. The Pacific Mail Company used to be represented at the weighing by an old man. The custom-house weigher would, of course, also be present, and Mr. Ed Smith would be there. I never saw a custom-house guard sitting around on the barge watching to see if smuggling was going on.

Since leaving the Western Fuel Company I have worked in the cement business for an Italian whose name I don't know. He is a little contractor.

I said on direct examination that I began working in the cement in February, but now I say it was the summer, because I was unemployed for four or five months after I quit the Western Fuel Company. The last time I quit the cement was I think in September or October. [973—914]

Cross-examination by Mr. McCUTCHEN.

When David Powers walked home with me from the waterfront I did not know what his business was, nor did he tell me, nor did he tell me whether he was employed, or what he had come to see me for. He walked all the way home with me, but made no statement to me. He was just talking and fooling around. He did not actually come as far as my home with me,

(Testimony of Philip Ganesi.)

but branched off at Second Street. Another day he went with me to the postoffice. I went in and went upstairs with him. He did not tell me what he wanted me to go to the postoffice for. When I got there I saw Mr. Tidwell and two or three men. We went up on the second floor to a room the number of which I forget.

Q. When Dave Powers asked you to come to the postoffice building, what did he say he wanted you to come for?

A. We went in, and he told me, he says, "That man is going to see you." "All right," I says; I went.

Q. He said that man wanted to see you?

A. Yes.

Q. In answer to a question put to you by Mr. Moore on cross-examination, you said Dave Powers had never talked with you about this matter at all, didn't you?

A. No, I never talked with him down on the front, no place, about the Western Fuel Company.

Q. When he told you that the man upstairs wanted to see you, what did he say he wanted to see you about? A. Well, just talk like we talk there.

Q. Just as you had been talking to Dave Powers before, was it? A. Yes.

Q. Then you had been talking to Dave Powers before about this case, had you? A. No. [974—915]

Q. What do you mean by saying that the man wanted to talk to you just as you had talked to Dave Powers before?

(Testimony of Philip Ganesi.)

A. We were talking like before, but I never knew about a combination, the trial of this Western Fuel.

Q. You knew at the time, didn't you, when Dave Powers met you on the waterfront, that he was employed by the Government? A. I never knew.

Q. You didn't know that? A. No.

Q. You never have heard that?

A. No, I heard it after.

Q. You heard it after, but up to the time that he brought you out to the postoffice building, you never had heard that he was employed by the Government?

A. No.

Q. Did you think it strange that he should ask you to come out to the postoffice building, without telling you for what purpose he wanted you to come?

* * * * * * * *

A. No, he says he wanted me to go up and see a friend in the postoffice.

Q. He wanted you to go out and see a friend at the postoffice building, did he? A. He did.

Q. Did he tell you who the friend was?

A. Yes, he told me.

Q. He told you? A. Yes.

Q. Who did he tell you it was?

A. It was Mr. Tidwell and a man they call McNab.

Q. Tidwell and McNab; did he tell you that Tidwell and McNab [975—916] were friends of his?

A. Yes.

Q. Did you ask him who Tidwell and McNab were?

A. Yes.

Q. Did he tell you who they were? A. Yes.

(Testimony of Philip Ganesi.)

Q. This all took place down on the waterfront, did it? A. Down in the postoffice.

Q. At the postoffice, but before he brought you to the postoffice, he told you he wanted you to come and see two friends of his? A. Yes.

Q. He told you that down on the waterfront, didn't he? A. Yes.

Q. Did you ask him why he wanted you to come and see those two friends of his?

A. Yes, I asked him, "What you want me for?"

Q. What did he say?

A. He said, "Come down; don't get scared; they won't hurt you."

Q. What did he say that he wanted you for?

A. He never say what he wanted to take me for. I went down and went up and saw these two people, and they asked me about the place I was working, and I told them straight, the truth.

Q. I am talking about your interview with Dave Powers. Was it before you left the waterfront that he told you that he wanted you to come and see two friends of his? A. Yes.

I cannot remember how many times I saw Dave Powers on the waterfront before he asked me to go to the postoffice, but I had not seen him for a long time before that. He did not say a word to me about this case. [976—917]

Redirect Examination by Mr. ROCHE.

I left the employ of the Western Fuel Company in February, and then I was sick for several months, and I went to work for the cement company on the

(Testimony of Philip Ganesi.)

26th of June. I was working in the cement when Rooker came up and asked me to go to the office of the defendant Mills. Upon the occasion when I came to the postoffice building at the request of and with David Powers, I made a statement to Mr. Tidwell and Mr. McNab concerning what I knew about the facts and circumstances to which I have here testified.

Recross-examination by Mr. MOORE.

It is not a fact that I went back and told Mr. Rooker, of the Western Fuel Company, that I was sick after Mr. Powers had seen me on a number of occasions down on the waterfront and talked with me and brought me to the postoffice building. The sickness occurred after the happening of that event. I will not testify positively that I have not had any talk with the Powers boys about my expenses or a reward while I was out of work. They have not paid anything for me.

Redirect Examination by Mr. ROCHE.

The last time that I worked at all was in the cement works, and that was about two months ago.

[Testimony of Jim Balestra, for the Government.]

JIM BALESTRA, a witness called for the United States, and sworn, testified as follows: [977—918]

Direct Examination by Mr. ROCHE.

I live now and have lived in San Francisco ever since I was subpoenaed in this case. I am at present employed by the D. O. Mills Estate in Millbrae, where I have been working for about nine months as land-

(Testimony of Jim Balestra.)

scape gardener. I was first employed by the Western Fuel Company in 1911 some time, in either April or May. Before that I had been an engineer. I continued to work for the Western Fuel Company up to about July, 1912. I shoveled coal down on the barges. I was employed on all the barges in this capacity. The first hatch-tender I worked for was Mr. Dave Powers, and the next Dan Pallas. I also worked in the Wilson gang, and also under Rooker. Once in a while I would work in the hold of a vessel which was discharging imported coal over sides. I should say that I have thus worked on ships three or four times. Dave Powers continued to work as hatch-tender only a short time after I began working for the Western Fuel Company. Most of my work was under Rooker. Sometimes I worked overtime at night. We used to get a rush that required this night work about every other month. I did most of my work, though, of course, in the day time. While I was thus working as a shoveler on the barges I was familiar with the manner coal was hoisted from the hold of a barge and dumped into the ships or liners. The frequency with which weights would be taken by the custom-house weighers varied. I would say that normally it would be about two or three weights a day. At night we generally took one weight just after we started to work, and another one before we got through in the morning. When I worked in the day time I commenced at seven o'clock, and worked until twelve o'clock, and then started at one and worked until five. When I was on overtime I some-

(Testimony of Jim Balestra.)

times worked all night. As to the method in [978—919] which we shovelers in the holds of the barges handled the tubs which were weighed and which were not weighed, I would say: When it was time for the United States Government to take the weights we would go to work and put on as much coal as we could possibly put on all of the tubs; and when we did not have to take the weights we would put it on "any old way," we would always leave the tubs not quite full. I never got any direct order to overload tubs from anybody, with the exception of one hatch-tender by the name of Rooker, who would give us a wink at the time when it was time for the custom officer to take a weight, and we knew the balance. Most of the time the custom-house officers used to complain that the tubs were overloaded when weights were to be taken. Some of them, however, did not complain. When a custom-house officer would complain, we, as a rule, would have to take some of the coal off the tub. The way in which we knew that a weight was to be taken was,—the weigher would be standing on one end of the barge, and the hatch would be in the center of the barge, so that when the hatch-tender saw the officer coming he would give us the wink. He did not know positively that a weight would be taken, but he would give us the wink anyway. Sometimes he would say, "They are going to take a weight." On the "Theobold," the "Melrose" and the "Wellington" the hatch-tender always called up a couple of men to help swing the tub over on the scales. When weights were to be

(Testimony of Jim Balestra.)

taken we, of course, put fine coal into the tubs if we had any show at all. The reason we did that was because it weighed more. In answer to the question whether anything was said by the hatch-tender or by anybody else upon the subject of putting more coal into the tubs and of putting fine coal into the tubs when weights were to be taken if we had a chance to do that, I would repeat what I have [979—920] already said, that we would get a wink from the hatch-tender that they were going to take a weight, and that we knew the balance. There are two ropes or tails upon each tub, located one on each side. On the “Nanaimo” and the “Comanche” we had scales which hung on a beam, called hanging scales. The tub would be placed upon a hook attached to a beam rod, and the coal thus weighed. At such time the tub would be located right in the hatch, below the deck perhaps ten feet. The custom-house weigher would be up on the deck. The part of the scales indicating the weight would be above the deck. On such occasions we would often step on the rope or tails of the tub if we had a chance to do so, and thereby press on the scales, and consequently make the scales register more weight than they should. We could not do that very often if the custom-house officer were on the lookout, but we did it whenever we had a show.

When I was working in the holds of ships discharging imported coal oversides, when they were taking weights on the ships we would generally load the tubs a little lower; otherwise, we would load them up properly. In other words, there would be

(Testimony of Jim Balestra.)

more coal in the tubs when they were not weighed than when they were weighed.

Cross-examination by Mr. McCUTCHEN.

I first spoke to the Powers brothers about this case after I was subpoenaed. I was first subpoenaed as a witness in this case on the 10th of December, 1913. I don't remember that I had ever seen the Powers boys, or either of them, about this case prior to the 10th of December. Neither of them saw me at the D. O. Mills Estate. I saw them, however, in San Francisco last August. I chanced to meet them on Second Street, but I did not talk to them about this case until after I was subpoenaed. [980—921] I did not talk to them about this case in August of last year. I said nothing about the case, not a word, I knew at that time that Dave Powers was employed by the Government. He told me so himself. I could not say how many times I saw Dave Powers prior to August of last year, and after I left the service of the Western Fuel Company. I knew at all the times after that when I saw him that he was employed by the Government. I was told that he was a special agent. I had read in the newspapers that these defendants had been indicted before I met Dave Powers, and I had also read in the newspaper that Dave Powers had been a witness, and that he was also a Government agent. I do not know how many times after reading that I met Dave Powers up to August of last year. I was pretty fairly friendly with him. I was very friendly with Eddie Powers. Neither of the boys ever saw me at Millbrae. I

(Testimony of Jim Balestra.)

do not know of their having been there at all.

In the barges, the majority of the fine coal would be on one side, and the majority of the rough coal would be on the other side. If a barge were loaded from the offshore side, the coarse coal would be on the offshore side, and the fine coal would be on the inshore; but you could easily see on which side of the barge each kind of coal was. That would be the case from bow to stern all the way along. If we wanted fine coal we would go to one side, and if we wanted coarse coal we would go to the other side. As a rule we got a wink from one of the hatch-tenders if a weight were to be taken. The width and length of the opening into the hold of the barge depends a good deal upon the particular barge,—some are larger than others. I worked on all the barges. The “Comanche” was pretty nearly all opening. I should judge there was about 25 feet of deck forward and 25 feet aft. There was a hoist engine on both ends. [981—922] As a rule, the custom-house weigher would be standing where the winch was not running when weights were not being taken. The hatch-tender would be over the hatch, standing on the edge of the deck. If the hoisting engine on the bow of the barge were operating, then the custom-house officer would be near the engine on the stern of the barge. The opening in the “Comanche,” over which the hatch-tender presides, runs the whole width of the barge, and I should judge its length would be about 60 feet. The depth of the hold is about 14 feet from the deck down. The duty of the hatch-tender

(Testimony of Jim Balestra.)

is to blow the whistle for the engineer when it is time to hoist the tubs. He also keeps time for the men. There is not very much noise when the hoisting operation is going on. When they start off, however, there is quite a noise, and it continues more or less as long as we are working. We work under pretty high pressure when the weighings are not being made. It is just about all we can do to fill the tubs and meet the hook. We are always down under the deck of the barge. In answer to the question whether we can see the wink of the hatch-tender through the deck of the barge, I would say that it was an easy matter to see the hatch-tender wink, because when we shove the tubs out into the hatch we certainly could see him in plain view.

(At this point, the witness, Jim Balestra, was recalled at his request to make a correction in his testimony as follows:

“When I gave the date of the subpoena, I stated that I had never had spoke to Mr. Powers about the case until after the subpoena was served to me, so I said it was the 10th of December, but I am mistaken, the first subpoena came to me the 26th of August, [982—923] and it was served to me quite a while before that date.

Q. It was sometime earlier in August?

A. Earlier, in either July or August.

Mr. ROCHE.—Q. In other words, the mistake that you made this morning was with reference to the date upon which the subpoena was served upon you?

A. That is the only mistake.”)

(Testimony of Jim Balestra.)

Cross-examination of the Witness JIM BALESTRA,
by Mr. McCUTCHEN.

I knew, therefore, as early as August that I was required to attend here as a witness on behalf of the Government. It was about a week after that. I think, that I saw the Powers boys. I used to come up here about once a month. When I saw them first after the subpoena was served upon me, I told them that I had been subpoenaed as a witness in this case. They did not tell me that they had been subpoenaed. They did not talk to me about the case at all. What I said this morning was that I had not spoken to Mr. Powers about this case until after I was subpoenaed, but I then thought that the subpoena had been served upon me in December. The talk that I had in August was with both of the Powers boys. We had a little talk about this case. They did not tell me what they were going to testify to. I told them I was likely to get confused on the witness-stand, because I had never been subpoenaed before, so both of the boys told me to go on the stand and tell the truth, and nothing but the truth, and nobody would be able to throw me down. To that extent I certainly did talk with both of the Powers boys before I came here to the courtroom as a witness, [983—924] but I did not tell either of them what my testimony was to be.

The stevedores work four in each end of the hold of a barge; that is to say, two tubs in each end. We push our tub up against the edge and shove it along and out on the hook and up it goes. We are com-

(Testimony of Jim Balestra.)

pelled to face the hatch in order to see if the hook is on straight when we hoist the tub. When we are loading the tub our backs are to the hatch. If any of the boys happen to look at the hatch-tender, he would wink with his eyes; if not, he would talk Spanish, so that the custom weigher would not understand it. When two sets of men are in the bow of the barge, and two in the stern of the barge, each man is stooping over with his back to the hatch. Two tubs are working all the time; as a rule one is coming out of the hatch, and the other would be going back to the hatch. When the men are going back with the tub, their backs are to the hatch. Until we get the wink we always assume that the tub is not to be weighed.

Q. Then, assuming that the tub is not to be weighed before you get the wink, you push the tub up to the side where the coarse coal is, don't you, and you begin to fill it from that side?

A. It all depends whether we are working or not, because many times, we are held from going ahead, and then we simply fill our tubs and push our tubs out to the edge, and many times the custom weigher would come along and weigh the tub as it stands.

Q. Many times the custom officer would come and weigh the coal as it stands? A. As it stands.

Q. Then as it stands, he would order one of those tubs up, would he?

A. Yes. [984—925]

A. And those were the tubs which you assume were not to be weighed, were they? A. Yes.

(Testimony of Jim Balestra.)

Q. Now, until you got the wink, you always understand that the tub is to be filled with coarse coal, do you not? A. Oh, not exactly.

Q. Not exactly; well, haven't you said that you filled the tubs that were not to be weighed with coarse coal, and the tubs that were to be weighed with fine coal?

A. It all depends whether it was on the rough side or the fine side.

Q. Why would you go to the fine side until you got the wink?

A. It was not my place to go to the fine side, if I was not belonging there.

Q. Exactly; you only went to the fine side when you knew that coal was to be weighed; is that correct?

A. Correct; but we don't push the tub to the fine side; we simply face it from the amidships into the fine side.

Q. When you got the wink at least two tubs had been filled, and the third was being filled, was it not?

A. Yes.

Q. So that the two tubs that were filled were filled with coarse coal, weren't they?

A. Well, at times they would be filled with coarse coal and at times they would be filled with fine coal.

Q. Why would you fill them with fine coal, if you did not know they were to be weighed?

* * * * * * *

A. Now, if I was supposed to work on the fine side, naturally, my tub would be full of fine coal all the time.

(Testimony of Jim Balestra.)

Mr. McCUTCHEN.—Q. All the time?

A. Yes. * * * * If I was supposed to be on the rough side, [985—926] then naturally, my tub would be full of the rough coal; when we got the wink, which we did not do all the time, but quite often, we would face our tub to the amidships, so as to get the fine coal into it.

Q. You made the statement this morning, didn't you, that in all cases where the tubs were weighed they were filled with fine coal—didn't you make that statement?

A. When we had a show to do it, we did.

Q. When you had the show to do it, you did. You did not say that this morning, did you? You said you always filled them with fine coal, didn't you?

A. I did not.

Q. You did not say that? A. I don't remember.

Q. You don't remember that you said that this morning? Did you also say this morning that when they were not to be weighed, you always filled them with coarse coal? A. I did not.

Q. You did not say that. At any rate, you did not intend to say that?

A. I don't remember having said anything of that kind.

Q. You don't remember having said anything of the kind?

A. While I was on the fine side, of course, naturally, I would fill them with fine coal—of course, naturally, we would fill the tubs with fine coal.

Q. When you were being examined by Mr. Roche

(Testimony of Jim Balestra.)

this morning, did you say you only did that when you were on the fine side? A. No, I did not.

Q. You did not say that this morning. Why didn't you tell us that this morning when Mr. Roche put the question to you?

A. I don't remember which way he asked the question.

Q. You don't remember how he asked the question?

A. No. [986—927]

Q. Do you remember that you said this morning that all of the fine coal was on one side and the coarse coal was on the other side?

A. I think I said the majority of the fine coal would be on one side, and the majority of the rough coal on the other side.

Q. You said, didn't you, that you would not have any difficulty in seeing on which side the fine coal was and on which side the coarse coal was?

A. Exactly.

Q. You said that? A. I did.

Q. Didn't you also say that when the coal or tubs were to be weighed, that you filled the tubs which were to be weighed only with fine coal?

A. We certainly did it whenever we had a show to do it.

Q. Whenever you had a show to do it? A. Yes.

Q. Then, in the other cases, you did not fill them with fine coal; is that true?

A. Well, if I was on the fine side, I was compelled to fill them with fine coal.

Q. What were you doing on the fine side until you

(Testimony of Jim Balestra.)

knew the tubs were to be weighed; you only went there when you knew they were to be weighed, didn't you? What you said this morning, you were mistaken about—why did you go over to the fine side, if you did not know the tubs were to be weighed? What were you doing there?

A. As I have explained to you once before, the man that belongs to the fine side has got to stay there all the time.

Q. So there were two of those tubs on the fine side all the time, were there? A. Yes, exactly.

Q. And two of those tubs were loaded from the fine side all the [987—928] time, and two were loaded from the coarse side all the time?

A. Correct.

Q. Did you say yes to that? A. Yes, exactly.

Q. Then half of the tubs when you were working there were filled with fine coal and half of the tubs were filled with coarse coal?

A. That is quite true.

Q. And you say that when you brought the four tubs out, that the customs weigher would very often tell you to take up one of the tubs that had coarse coal? A. Sometimes he would.

Q. Wouldn't he sometimes tell you to take up more of the tubs that had coarse coal?

A. Well, I believe that happened.

Q. You described the "Comanche" this morning, and you stated there was about 25 feet of deck on the bow and 25 feet on the stern of the "Comanche"?

A. On or about that; I don't know exactly.

(Testimony of Jim Balestra.)

Q. How about the other barges,—have they smaller hatches than the “Comanche”?

A. No, some of them are bigger; the “Melrose” and the “Wellington” are bigger.

Q. Do you mean to say that the “Wellington” has only 25 feet of decking on the bow?

A. I mean to say some of the barges are bigger than the “Comanche.”

A. I am talking about the length of the deck on the “Wellington”?

A. Well, the “Wellington” is a big barge.

Q. And how much deck has she on the bow, according to your best recollection?

A. She must have at least 40 feet.

Q. How much decking has she on the stern?

A. On or about the same, probably a little less.

[988—929]

Q. Then you would say that at least 80 feet of the hold of the “Wellington” is covered by the decking?

A. I think it is; I am not sure of the length.

Q. Did you work on the “Wellington” also?

A. I did.

Q. And the coal is stowed underneath that decking, fore and aft on the “Wellington,” is it not?

A. It is part, not very much of it.

Q. I asked you this morning, and I don’t think that was answered very well, whether there was a good deal of noise while that operation was going on down there?

(Testimony of Jim Balestra.)

A. There is a good deal of noise going on, on the barge "Comanche."

* * * * *

Mr. McCUTCHEN.—Q. Is it not true, is not that true of all of the barges, that there was a great deal of noise on all of the barges?

A. No; it is not; some of the barges, it would not make much noise, and on others they make more.

Q. Is there always one tub underneath the hoist, just ready to be hoisted?

A. Almost every time, yes, almost all the time.

Q. And at that time, that is to say, when there is one tub just underneath the hoist, there is one other tub that has been loaded and is coming toward the hoist, is there not?

A. One tub goes up and the other one is coming to the edge, when that tub comes back the other one is lifted up.

Q. At the time that that tub meets the hook is there not another tub going toward the hook that has been loaded?

A. When it meets the hook one of them goes back and the other one, if they don't go too fast, it will be coming in, but if they go fast sometimes you cannot meet the hook. [989—930]

Q. You don't understand me. When the tub is wheeled up underneath the hoist where you intend to put it on the hook, is there not another tub coming along toward it at the same time? A. No.

Q. Where are the other three tubs then?

A. One goes back from the hatch and one is hoisted

(Testimony of Jim Balestra.)

and two of them are loading.

Q. When the hatch-tender whistles so that you understand, or when he gives the signal "On the Scales," does not that tub which has been loaded and which has been brought up to the hook go up on the scales? A. It goes up, yes.

Q. Just as it is? A. Just as it is.

Q. That is to say, that tub, having been rolled out under the hoist at the time that signal is given, is taken up and put on the scales exactly in the condition it was at the time the signal was given?

A. No, not every time because at times he would give us the wink ahead, maybe a round or two ahead of that time.

Q. Oh, this wink that you speak of was given a round or two ahead; is that correct?

A. At times, not always.

Q. Not always? A. No.

Q. When the wink was given to you, when did you understand the weighing was to take place, the next round, or the second round or the third round?

A. Then we would be good and careful to overload every time so that when they did take the weight they would be on the safe side.

Q. Oh, after you got the wink you loaded the tubs to overflowing every time so as to be sure not to get caught; was that it? A. Exactly.

* * * * *

[990—931]

Q. After you got the wink you went on the fine side and you continued to go to the fine side until

(Testimony of Jim Balestra.)

the weight was taken?

A. We faced the tub to the fine side and we scooped it from the fine side.

Q. During all this time could you see the custom-house weigher? A. Yes, sir.

Q. Didn't you state this morning that a good part of the time he was down at the winch?

A. He was down at the winch all the time; many times he would be walking around the deck.

Q. If he was at the winch, you could not see him, could you? A. If he was not in sight, no.

* * * * * * * *

Mr. McCUTCHEN.—Q. How did the hatch-tender know that the custom-house weigher was going to give him a signal?

A. Well, he could see, he could see the custom-house officer; he was up on deck; we were down in the hold; we could not see him, but he could; and whenever he saw him coming he simply gave us a wink.

Q. You said that the custom-house officer was walking up and down the deck a good deal of the time?

A. Well, sometimes he would, of course.

Q. Well, was it a good deal of the time?

A. Well, the most of the time they would be either on the deck of the steamer or on one end of the barge.

Q. Well, he was walking up and down past the hatch-tender a good deal of the time, was he not?

A. Oh, a few times, yes. [991—932]

Q. How many times during the day?

A. Oh, I don't remember that.

(Testimony of Jim Balestra.)

Q. And every time he would pass along by the hatch-tender, the hatch-tender would give you a wink?

A. No—

* * * * *

Mr. McCUTCHEN.—Q. How many times, if you can tell, would the hatch-tender get the impression from the movements of the custom-house weigher that the custom-house weigher was going to call for a weight?

A. At the time I didn't know anything that we were going to have any case of this kind, and consequently I never took any interest and I never kept track of anything of that kind.

Q. Were you always under the hook, immediately underneath the hook at the time when the hatch-tender got the impression that the custom-house man was going to call for a weight?

A. Well, one of the tubs would be, as I explained to you before.

(Witness continuing.) I quite often saw the custom-house weigher direct that a part of the tub-load of coal be removed before a weight was taken. That was a common occurrence. Common sense told me that the fine coal weighed more than the fine and the coarse combined. I have not heard that matter discussed by anybody since I have been subpoenaed as a witness.

We did not often step on the rope or tail of a tub in order to increase the weight thereof, because we did not have a show. That was the only reason that

(Testimony of Jim Balestra.)

we did not do so more often. The length of those ropes or tails is perhaps three or four feet; it all depends on the size of the tubs. They are attached about two-thirds up the tub, and then they hang down, let us say, a foot or two below the tubs. The tubs on a hanging-scale are raised [992—933] about a foot or less. They are raised high enough so as to clear the tub from the floor. The rope, however is supposed to drag. The custom-house weigher at the time is on the deck. The ropes certainly come down below the bottom of the tub. Sometimes the tub barely clears the floor.

Redirect Examination by Mr. ROCHE.

I understand the Spanish language in part.

Recross-examination by Mr. McCUTCHEN.

I was born in Switzerland.

Further Redirect Examination by Mr. ROCHE.

Rooker, the hatch-tender, I think, is a Mexican.

Further Recross-examination by Mr. McCUTCHEN.

I acquired a knowledge of the Spanish language in San Benito County. I was down there up to the time of the earthquake in 1906.

[Testimony of Tony Belish, for the Government.]

TONY BELISH, a witness called for the United States and sworn, testified as follows:

I now live in San Francisco, and have lived here eight or nine years. I began working for the Western Fuel Company some months before the earthquake and fire in 1906, and continued working for that company about three years. Then I was sick

(Testimony of Tony Belish.)

about two years, when I began working for that company again and continued with it until three or four months ago. [993—934]

The kind of work that I did was shoveling coal down in the holds of barges and in the holds of ships discharging imported coal over sides at Folsom Street or Howard Street bunkers, where the coal was sent up in buckets.

I would go to work on the barges at seven o'clock in the morning and would leave at five o'clock at night. Sometimes I worked overtime at night also, but that would be only a few times. Such overtime work would last until eleven or twelve o'clock at night. I worked all night a very few times at Folsom Street. When I began working with the Western Fuel Company before the fire Dan Pallas was one of the hatch-tenders. I also worked for Frank Wilson afterward. I was under Dan Pallas three years. I know David Powers. I was under him as a hatch-tender three or four years ago. I know Rooker, who is now hatch-tender for the Western Fuel Company. I worked under him a few times. The hatch-tender under whom I was working when I left the Western Fuel Company about three months ago was Frank Wilson, and he had been hatch-tender for a long time theretofore.

When I was shoveling coal in the barges weights would be taken sometimes every fifteen minutes, and sometimes every two hours. Four buckets would be weighed out of 25 sometimes, and at other times four out of overy 50. Sometimes weights would be taken

(Testimony of Tony Belish.)

four or five times a day, and sometimes three times a day. At night weights would be taken from two to four times. When the tubs were going on the scales, the practice of the shovelers was to get heavy coal from amidships, if they had the chance and there was no custom-officer around. By amidships coal I mean fine coal. In the wing the coal is rough and light. I would know when a weight was going to be taken [994—935] because the hatch-tender would holler, "Give me a tub on the scales." There are two different kinds of scales on the barges,—one a platform scale, and the other a hanging scale, the latter of which hooks on to the tub down in the hold. When the coal was to be weighed on the platform scales, the hatch-tender would call for a couple of men to come up from the hold on to the deck and give a hand and pull the tub over on the scale. These men would come up to the deck before the tub came up. After the men came up on the deck the shovelers in the hold would stand there and fill up the tubs. They would fill them up good, you know, load them. They would put a little more coal in the tubs when they go on the scales. I have done that myself. The hatch-tender gave me a sign to that effect. He would say, "This fellow is going on the scale," and would make a sign which everybody knows who has worked down there five or six years. There would be about 100 pounds difference in the tubs which were weighed and those which were not weighed. When a ship was being discharged over side of imported coal, the tubs that were weighed would, a good many times, be

(Testimony of Tony Belish.)

lighter than those which were not weighed.

On the barges, the hatch-tenders made trouble when the light tubs went on the scales. They would say, "Why don't you give me a heavy tub on the scales?"

I was not discharged from the Western Fuel Company. I had to work on the barge "Wellington" once, three months ago, and it was hard work, and I quit.

Cross-examination by Mr. McCUTCHEN.

I have known David Powers and Edward Powers for eight years. They have three houses, but I don't know in which one [995—936] of them they are living now. They have never called at my house, and I have never been inside of their house, though I have been to their house. I was subpoenaed as a witness in this case about four months ago. I have seen the Powers boys almost every day since then, but have talked nothing about this case to them. I simply told them that I had been subpoenaed in connection with the Western Fuel Company. I used to work for the father of the Powers boys on the trimming on various Pacific Mail ships and on certain German and French tramp ships. That was about three years ago. I started to work for him on Folsom Street. When I was working on ships discharging coal oversides, the bosses told us to send the tubs up light when they were to be weighed. Dan Pallas and Frank Wilson told me that. The coal in the middle of the hold is heavy, and on the two sides light.

(Testimony of Tony Belish.)

When we wanted to load the tubs heavy we used fine coal from amidships, that is the heavy coal.

I have said the difference between the weight of the tubs that were weighed and those that were not weighed on the barges was 100 pounds. I know, because I was on the deck and put the tubs on the scales, and when they had rough coal it weighed about 1800 or 1900 pounds, and when they had fine coal it weighed about 2100 or 2150 pounds.

Q. But when the tubs were to be weighed and it was known they were to be weighed, they were always filled with fine coal, which you say was the heaviest coal? A. Yes, fine coal is heavy coal.

Q. And those tubs which were to be weighed did not have any lump coal in them at all?

A. Sure, they get some lumps, but they get between the lumps, [996—937] fine stuff, pretty fine stuff, and pretty much of the fine stuff.

Q. When you saw there was no custom officer around, you got the heavy coal? A. Sure.

Q. Was not a custom-house officer around a good deal of the time?

A. He is once in a while, but when he was not there, we got the chance to fill with fine stuff.

Q. You were under the deck a good deal of the time, weren't you?

A. Not that time when he was weighing—the custom-house officer, when he takes the weight, two men go up on deck.

Q. Two men would go up on the deck? A. Yes.

(Testimony of Tony Belish.)

Q. When those two men went on deck, where would the tubs be?

A. The full tubs were down in the hold, and the hoisted coal, two men would come up and give them a hand to put it on the scales.

Q. Was there one tub loaded immediately under the hatch at the time a whistle was blown for a weight? A. One tub right in the hatch full.

Q. Would the men take some fine coal and go over and fill that tub, then, in the presence of the custom-house weigher?

A. When the custom-house officer is weighing, they can't put it in, they can't have any chance.

Q. That tub would have to go up just as it was?

A. Yes.

Q. Now, the only sign you had, or only signal you had that tubs were to go on the scales was either a whistle, or the hatch-tender would say, "The tub is to go on the scales"? A. Yes.

Q. That was the only sign you had, was it not?

A. Well, sometimes he gave me a sign like that (illustrating).

Q. A sign like that?

A. Yes. [997—938]

Q. That is to say, before you knew the tubs were to go on the scales? A. Sure.

Q. Well, now, didn't the custom-house man tell you that the tubs were to go on the scales, or didn't he tell the hatch-tender that the tubs were to go on the scales?

A. The custom-house officer told the hatch-tender,

(Testimony of Tony Belish.)

and the hatch-tender told it to the men down in the hold.

Q. The hatch-tender would tell it out loud, would he not? He would call out loud, "On the scales," would he not?

A. Well, there is three tubs in the pile, and one tub in the hatch, and they put more coal in the three tubs in the pile.

Q. The hatch-tender would call out loud, "On the scales"; isn't that true?

A. I don't understand what you mean.

Q. Wouldn't he say, "On the scales," and wouldn't he say it very loud, so that all the men could hear?

A. I don't understand what you mean.

Q. Did you ever hear the custom-house officer say "On the scales"? A. Very few times.

Q. Very few times. Did you ever hear the hatch-tender say "On the scales"?

A. Yes, all the time.

Q. He said that all the time, that they were to go on the scales? A. The hatch-tender, yes.

Q. And that was the signal that you had to know that the tubs were to go on the scales? A. Yes.

Q. On every occasion, isn't that correct?

A. I don't know what you ask me.

Q. Now, I will put it to you slowly, and see if you do not understand; Whenever the hatch-tender wanted the tub to go on the scales, he said [998—939] out loud, didn't he, "On the scales"?

A. Yes, he sung out, "On the scales."

Q. And then all the men knew the tubs were to go

(Testimony of Tony Belish.)

on the scales, didn't they? A. Yes.

Q. And that was the sign or signal that you had, was it not?

A. Yes, but as I told you, there was one tub in the hatch, and the hatch-tender says, "You fellows come up," and there was three tubs in the pile, and you put more coal in those three tubs.

Q. Now, at the time there is one tub in the hatch, and the signal "On the scales" is given, isn't there one tub going toward the hatch—is there not one tub well toward the hatch? A. One tub is in the hatch.

Q. One tub is in the hatch, and one tub is being brought to the hatch?

A. Not too close, because it sometimes goes so far it don't meet the hook.

Q. Well, one tub is under the hatch, or in the hatch? A. Yes.

Q. And one tub is coming toward the hatch?

A. Yes.

Q. Isn't it taken well toward the hatch, and the other tubs are being filled; isn't that true? A. Yes.

Q. That is correct, isn't it? A. Yes.

Mr. ROCHE.—It is quite apparent that one would have to be going out, because the other tub had just left the hook.

Mr. McCUTCHEN.—Q. At any rate, one tub is in the hatch, one tub is coming to the hatch, one tub is being still filled, and the last tub is going either into the stern or the bow of the barge; isn't that correct?

A. Yes, one tub being in the hatch, and mine being

(Testimony of Tony Belish.)

right in the [999—940] pile, I have lots of time to push it ahead, because they have to go up and dump it.

Q. How long did it take to load a tub when you were hoisting rapidly? A. To load one tub?

Q. Yes.

A. Well, it took about a minute, a minute and a half.

Q. About a minute and a half? A. Yes.

Q. Did you work very rapidly, very fast?

A. Sure, have to do it.

Q. Have to work very fast? A. Yes.

Q. Did you always work with a shovel, or did you scoop it up?

A. Sometimes scoop it up and sometimes with a shovel.

Q. When you can, you scoop it up?

A. I scooped it lots of times.

Q. When you cannot scoop it up, you put it in with a shovel? A. Yes.

Q. How many tubs go up in a minute, when you are working rapidly, I mean an hour?

A. In an hour, sometimes about 60 or 70 tubs, when going fast.

Q. When they were working rapidly down there, did they weigh every fifteen minutes?

A. Sometimes, yes.

Q. Sometimes they weighed every fifteen minutes. Whenever they weighed every fifteen minutes, how many tubs were they raising?

A. Well, fifteen or twenty tubs, sometimes.

(Testimony of Tony Belish.)

Q. Fifteen or twenty? A. Sometimes.

Q. Now, are you quite certain about that, Mr. Belish, that they weighed every fifteen minutes—are you quite sure of that?

A. Well, I know, because some custom-house weighers took them every ten or fifteen minutes, as Bill Hubbard worked about six years ago, by Jesus, he took fifteen tubs one after the other. [1000—941]

Q. Who was that that insisted on taking weight every ten or fifteen minutes?

A. Bill Hubbard, one time.

Q. When was that?

A. That is a custom-house officer.

Q. When was that?

A. That was down on Pier 44.

Q. When, at what time?

A. Five or six years ago.

Q. At the time he wanted to take a weight every ten or fifteen minutes, how many tubs were they raising an hour?

A. They were raising an hour about 60 or 70 tubs, they were going fast.

Q. What other custom-house officers would want to take weights every ten or fifteen minutes, if any?

A. Sometimes they took them every hour, sometimes they go slow.

Q. Sometimes you were going slowly? A. Yes.

Q. You say at night they took three or four weights? A. Yes.

Q. That is, would they take three or four weights between the time you began work and eleven o'clock

(Testimony of Tony Belish.)

or the time when you began and five or six o'clock in the morning—I will withdraw that question. You say that you very seldom worked all night; as a rule, when you worked at night, you quit at eleven o'clock? A. Yes.

Q. What time would you begin work in the evening?

A. I have started at six o'clock in the evening, sometimes, and worked all night, sometimes worked to twelve o'clock, and sometimes until ten o'clock.

Q. When was it that they would take three or four weights, was it all night, or from six o'clock until eleven o'clock, or six [1001—942] o'clock until twelve o'clock?

A. Sometimes all night, sometimes till twelve o'clock, they took three or four; sometimes they took four weights all night.

Q. Sometimes they would take four weights all night? A. Yes.

Q. Would that be when they were raising rapidly, or when they were raising the tubs slowly?

A. Slowly.

Q. That was when they were raising the tubs slowly? A. Yes.

Q. How many tubs would they raise an hour during the night, as a rule?

A. *Well, they* are going very fast, they raise about 55 or 60 tubs.

Q. An hour? A. Yes.

Q. Do you call that slow work or fast work?

(Testimony of Tony Belish.)

A. Well, in the night-time, it is fast enough for night-time.

Redirect Examination by Mr. MOORE.

I know the defendant, Edward J. Smith, and have seen him lots of times on the barge keeping tally.

Recross-examination by Mr. McCUTCHEN.

I also saw the Pacific Mail man keeping tally over there too.

[Testimony of Thomas T. Sawdon, for the Government.]

THOMAS T. SAWDON, a witness called for the United States and sworn, testified as follows:

Direct Examination by Mr. ROCHE.

I am now living, and have lived for a number of years, in San [1002—943] Francisco. I have been a marine engineer since 1884, and I was employed in that capacity by the Pacific Mail Steamship Company for about 26 years. After voyages on other vessels I became chief engineer on the “Mongolia” of that company, and held that position from 1906 until 1910. I think I was chief engineer on that ship first on voyage 12.

During the four years that I held that position the “Mongolia” coaled in San Francisco as well as in other places. Her coaling here was done at Pier 42. When we were not carrying much cargo, we used to coal partly in the Orient, and upon other occasions we obtained quite a quantity of coal from the Western Fuel Company in San Francisco. In fact, all the coal we received in this port was from the

(Testimony of Thomas T. Sawdon.)

Western Fuel Company. There used to be a reserve bunker on the "Mongolia," but a partition was put in, and they took part of the bunker capacity for cargo. The "Mongolia" is a sister ship of the "Manchuria." I had in my room as chief engineer a blue-print showing the dimensions and capacity of the "Mongolia" bunkers. I would say that the average quantity of coal that we took here in San Francisco would be approximately about 2,500 to 2,800 tons. When we started to coal here some of the bunkers would be entirely empty, and then there would be others known as broken bunkers, which were partly filled with coal. When I was chief engineer on the "Mongolia" I kept myself advised concerning the capacity of the coal bunkers. I would go in them every day.

(The attention of the witness was here directed to Defendant's Exhibit "J," purporting to be a blue-print of the steamship "Mongolia.")

I recognize that blue-print as a blue-print of the "Mongolia." I do not see on this blue-print a statement of the [1003—944] number of cubic feet in a ton of coal. That appeared, however, on the blue-print which I had in my room on the "Mongolia." It was 42 cubic feet to the ton. After the "Mongolia" had been coaled in San Francisco, I would make an examination of the bunkers into which the coal had been discharged. I had to O. K. the bills that were presented by the Western Fuel Company. I would be a funny engineer not to examine my bunkers to see how much coal I had before

(Testimony of Thomas T. Sawdon.)

I left San Francisco. I certainly examined the bunkers for the purpose of enabling me to pass intelligently upon the bills of the Western Fuel Company. I always went through the bunkers, therefore, when they finished coaling. I would thus find out to what extent the bunkers were filled, so far as it was possible to gain that information. So far as the broken bunkers were concerned, I would know pretty close to the amount of coal that was already in them before the Western Fuel Company started to discharge coal into them. I would know to within 15 or 25 tons. When the Western Fuel Company finished the coaling, I would again examine the bunkers as soon as I could go through the manhole to look around.

Q. During the period of time to which you have referred, these four years, while the "Mongolia" was being coaled from time to time at the port of San Francisco, state whether you noticed at any time a shortage in the quantity of coal supplied to your ship by the Western Fuel Company, as tested, between the quantity of coal which you found to be upon the ship and the bill presented by the Western Fuel Company for your O. K.

* * * * *

A. The amount that they discharged into the ship, that is what I am trying to get at; where we take the bunkers at 42 feet [1004—945] and the man tells me that the coal is running heavy, 39 cubic feet, 38½, it goes to show that between the weights I had no kick about it; in other words, if the coal was run-

(Testimony of Thomas T. Sawdon.)

ning 42 feet, as we would take the bunker capacity, it would show a shortage of coal.

* * * * *

Mr. ROCHE.—Q. In ascertaining whether there was or was not a shortage, would you take the cubic feet contained in a ton of coal as specified in your blue-print and plans? A. Would I take it?

Q. Would you take 42 cubic feet to be contained in the ordinary ton of coal?

A. That is what we were going by; that is what we went by on the ship.

Q. Assuming that there were 42 cubic feet of coal in a ton, upon these occasions to which you have referred was there or was there not a shortage in the coal?

The COURT.—He has said there was on that assumption, and he has further said inferentially that if he took the statement of Mr. Park, or the other gentleman, that the coal was running heavy at 39 feet, that there was not.

Mr. ROCHE.—Very well. Your Honor is correct in that statement.

The COURT.—Yes.

I never in San Francisco measured the coal for the purpose of ascertaining how many cubic feet there were in a ton, but I did make such measurements in Japan.

The marine superintendent of the Pacific Mail Steamship Company, when I was chief engineer on the “Mongolia,” was Chisholm. [1005—946] I never had any conversation with the defendant Mills

(Testimony of Thomas T. Sawdon.)

about a shortage on my ship.

In answer to the question whether I ever watched the operations which resulted in the coaling of my ship, that is to say, the hoisting of the tubs from the barge, I would say that I have stood there at times for a short while. I have never been there for as much as half a day. As I would be going ashore, or over to the office, or going back on deck, I would naturally stop for a spell of 10 or 15 minutes to look at the operation, but I never remained for any length of time to see what was going on. On such occasions I would be on the boat deck looking down. In that position I would be probably 30 or 40 feet away from the point where the bucket would be tripped and the coal discharged. I could not look straight down, because we always had a canvas stretched across to keep the dust off the ship. I would take a slant down from the side sideways. I was a little below the point where the tub was tripping. If I watched closely I could see the tub or bucket as it was being hoisted. The bucket, however, was travelling right fast, you know. In answer to the question whether I upon occasions watched the buckets, I would say that I have for a short time. I have taken a look on many occasions, and in connection with different voyages. Sometimes I have observed weights being taken, and I would notice the tubs which were weighed as they were being hoisted up from the scales. I would notice then that the tubs that were weighed were quite full. There would be more coal, as a general thing, in those tubs than in

(Testimony of Thomas T. Sawdon.)

the tubs that were hoisted and were not weighed. I would say that the ordinary tub, that is to say, the unweighed tub, would be run on water measure, by which I mean that it would be full to level. [1006—947] The other tubs, that is the weighed tubs would be rounded up a little, and there would be a little more coal in them. That is the way it appeared to me.

Q. You have said that the Western Fuel Company coaled your ship from time to time while at San Francisco. That is correct, is it?

A. That is correct.

Q. And that after the coal process had been completed and before the bills were presented to you you visited the bunkers or looked into the bunkers for the purpose of finding out how well filled they were and what quantity of coal you had in the bunkers?

A. Yes, sir.

Q. After leaving San Francisco and while the boat was consuming coal for the purpose of propelling it across the Pacific, and upon other occasions back again, would you make a calculation for the purpose of determining whether there was or was not a shortage of coal on board?

* * * * *

A. No, I never made a calculation. The coal was running heavy—rotten—and I charged enough, and when I got over to the other side I would know what I had in the bunkers then and I certainly razooed it down to make it come out right; in other words, going out maybe I would charge 180 or maybe 185 tons a

(Testimony of Thomas T. Sawdon.)

day, and when I got over, if I had surplus coal over what I charged I cut it down to bring it down accordingly; in other words, maybe I was only burning 168 tons or 170 tons.

Q. In other words, you make an average?

A. We would make an average on the outward voyage.

* * * * *

Mr. ROCHE.—Q. Do you know whether the bills which were presented from time [1007—948] to time by the Western Fuel Company for coal claimed by it to have been discharged upon or laden into the “Mongolia” were paid?

A. Well, I don’t know anything at all about that. All I had to do was to sign for the amount received, and the Commander signed, and the papers went to the office.

Q. Did you O. K. the bills as they were presented?

A. I O. K.’d them for the amount received.

Q. Did these bills specify the number of tons and lbs. of coal which the Western Fuel Company claimed they had discharged into the “Mongolia”?

A. They did. They even carried it out to the lbs.

Q. And, of course, you made a memoranda, did you not, of the quantity of coal, both tons and lbs., which the Western Fuel Company claimed they had discharged into your ship?

A. You will find that on the abstract.

Q. And those figures were placed upon the abstract by you; is that correct?

A. Yes, sir, that is correct.